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530-318—74——4

In The Quarter Sessions Court of Allegheny County, Pennsylvania

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Docket entries: Court met Thursday, Nov. 10, 1966 at 9:30 A.M. E.S.T.

Present: Honorable Gwilyn Price Jr.; Honorable Albert A. Fiok; Honorable Frederic G. Weir.

Specially Presiding: Honorable Earl S. Keim, 10th Judicial District; Honorable James A. Reilly, 14th Judicial District; Honorable H. Clifton McWilliams, 47th Judicial District.

Court Opened by Court Crier—Angelo Cosentino.

COMMONWEALTH

vs.

HERBERT FRED LANGNES,
RICHARD OLIVER JOSEPH MAYBERRY,
DOMINIC CODISPOTI,

No. 4672 of 1965 Approved

Charge: Holding Hostages in Penal Institution/Prison Breach

Judge: Albert A. Fiok

A.D.A. Robert Medonis—advisors—T. Livingston for Langnes, T. A. Harper for Codispoti, S. Saraf for Mayberry

Pros. Harry Anderson

And now, Nov. 7, 1966 and Nov. 9, 1966 Defendants present with counsel in open Court when Jury was selected in this case

And now, Nov. 10, 1966 Defendants in open Court with counsel severally plead not guilty. Issue joined by District Attorney. A jury being called there came: Arcilius D. Lyle Sr., William J. Watt, Dominic Tignanelli, Irene Lucciola, Stella Cieslak, Doris G. Getty, John T. Miller, Joseph Plachecki, Mary E. Werthman, Marlene F. Kraft (Frechs), Steve A. Casper and Ruth Marlowe. Alternate are the following No. 13 Ferdinand Malik and No. 14 Dorothy Haenel.

And now, Nov. 18, 1966 at 1:55 P.M. Alternate Juror No. 14 Dorothy Haenel excused due to illness. Fourteen good and lawful men and women, duly summoned, returned, elected by ballot empanelled and sworn do respectively say,

And now, Dec. 9, 1966 as to each defendant—Guilty See verdict filed as charged on both counts.

And now, Dec. 9, 1966 in open Court, Defendants present with counsel when verdict recorded.

And now Dec. 12, 1966 as to each defendant the following sentence imposed.

Eodie, in open Court defendants appearing with counsel are each sentenced to pay a fine of 6¼¢ to the Commonwealth pay costs of prosecution and undergo an imprisonment of not less than Fifteen (15) years or more than Thirty (30) years and stand committed, and be sent to the Western Correctional Diagnostic and Classification Center of Pennsylvania. This sentence to take effect upon the expiration of any of the sentences that each defendant is now serving. This sentence applies to the 1st Count of the indictment.

Eodie, as to each defendant, as to the 2nd Count of the indictment the following sentence imposed.

Eodie, in open court Defendants appearing with counsel are each sentenced to pay a fine of 6¼¢ to the Commonwealth, pay costs of prosecution and undergo an imprisonment of not less than Five '5' years or more than Ten '10' years and stand committed and be sent to the Western Correctional Diagnostic and Classification Center of Pennsylvania. This sentence to take effect upon the expiration of the original sentence and any other sentence previously imposed which remains to be served at the time the the offense of Prison Breach was committed as to each defendant.

Application to Withdraw Appearance of Counsel—approved Oct. 26, 1965.

Order granting postponement filed Oct. 1965.

Order granting transcription of testimony, etc. filed Oct. 28, 1965.

Writ of Habeas Corpus filed & dismissed—filed Dec. 16, 1965.

Motion to Quash Indictments filed Dec. 16, 1965.

Petition Dismissing Writ of Habeas Corpus filed Dec. 21, 1965.

Letter requesting Speedy hearing on Motion to Quash Indictments dated Jan. 7, 1966 filed.

Commonwealth's answer to defendant's motion to quash indictments filed Jan. 7, 1966.

Brief Sur Application to Quash Indictment filed Jan. 11, 1966.

Deft's Counter—reply to Comm. Answer to quash indictments filed Jan. 17, 1966.

Order of Judge Olbum making Public Defender available to deft's. for consultation, etc. filed Jan. 17, 1966.

Letter dated Jan. 27, 1966 requesting copy of Judge Olbum's order making Public Defender available to deft's.

Opinion of Judge Graff denying petition to quash indictments filed Feb. 1, 1966.

Letter dated Feb. 3, 1966 requesting copy of transcript of hearing on motion to quash filed Feb. 9, 1966.

Order of Judge Graff authorizing authorities of State Correctional Institution at Pgh. to make transcription available to deft's. filed Feb. 9, 1966.

Application for Issuance of Defendant's subpoena filed Mar. 30, 1966.

Application for Bill of Particulars filed July 1966.

Application for Issuance of Deft's. subpoena and show of proof filed Sept. 1966.

Petition to Stay all Proceedings pending Appeal to Superior Court filed.

Bill of Particulars and Acceptance of Service filed Sept. 21, 1966.

Deft's Waiver of Right to Counsel filed Sept. 29, 1966.

Order of Judge Pick to subpoena and product witnesses at trial filed Sept. 29, 1966.

Order of Judge Fiok appointing Thomas A. Livingston, Esq. as counsel filed Sept. 29, 1966.

Order of Judge Fiok setting date of trial filed Sept. 29, 1966.

Petition for Subpoena of Witnesses filed.

Order of Judge Fiok directing Supt. of State Correctional Inst. at Pgh. to issue civilian clothing to deft's for trial filed Oct. 14, 1966.

Order of Judge Fiok re-setting date for trial filed Oct. 25, 1966.

Petition to Amend application of Issuance of Deft's subpoena filed October 28, 1966.

Order of Judge Fiok directing certain witnesses be produced for trial of deft's. filed Nov. 1, 1966.

Petition for change of Venue—Denied by Judge Fiok filed Nov. 1, 1966.

Application to Quash Indictment—Denied by Judge Fiok filed Nov. 4, 1966.

Order of Judge Fiok directing Montgomery and Rockwell be produced as defense witnesses filed Nov. 10, 1966.

Order of Judge Fiok directing Manual Madronal be produced as defense witness filed Nov. 21, 1966.

Pet. for copies of Notes of Testimony, etc. in Forma Pauperis filed Mar. 22, 1967.

Order of Judge Fiok for contempt of court filed Apr. 4, 1967.

Order of Judge Fiok directing transcripts be made available to deft. filed June 27, 1967.

Certioraries to Superior Court at Nos. 95 and 96 April Term, 1967 filed Jan. 19, 1967.

In the Supreme Court of Pennsylvania, Western District

Nos. 102 to 113 March Term, 1967

COMMONWEALTH OF PENNSYLVANIA

v.

HERBERT F. LANGNES,
RICHARD OLIVER JOSEPH MAYBERRY,
DOMINICK CODISPOTI

APPEAL OF RICHARD OLIVER JOSEPH MAYBERRY

For appellant: *Richard O. J. Mayberry,* I.P.P.
For appellee: *Robert W. Duggan,* District Attorney, *Charles B. Watkins,* Asst. Dist. Atty.
August 11, 1967 Transferred to Philadelphia
October 23, 1967 Continued
March 19, 1968 Non Pros
September 30, 1968 Transferred to Philadelphia
November 12, 1968 Argued 388

DECISION

April 23, 1969 Judgment of sentence affirmed. Jones J.
Mr. Justice Roberts filed a concurring opinion.
Mr. Justice Eagen concurs in the result.
Mr. Justice Cohen concurs in the result.
Mr. Justice O'Brien filed a concurring and dissenting opinion.
March 20, 1968, Certificate of Non Pros sent to court below.
July 31, 1969 Remitted

DOCKET ENTRIES

January 30, 1967, Petition in Forma Pauperis granted. Appeal from the judgment of sentence of 2 to 4 years of the Court of Oyer & Terminer and General Jail Delivery and Court of Quarter Sessions of the Peace of Allegheny County at No. 4672 September Term, 1965.

February 1, 1967, Appeal and affidavit filed and writ exit, returnable last Monday of September, 1967.
February 16, 1967, Appearance for appellee, filed.
July 21, 1967, Petition to continue, filed.
August 1, 1967, Answer filed.

ORDER

August 7, 1967. Petition granted. Per Curiam.
October 18, 1967, Petition to continue, filed.

ORDER

October 23, 1967. Petition granted. Per Curiam.
January 9, 1968, Appearance for appellee, filed.
February 26, 1968, Petition to continue, filed.
February 28, 1968, Answer filed.

ORDER

March 5, 1968. Petition denied. Per Curiam.
March 11, 1968, Petition for reconsideration of petition to continue, filed.
March 12, 1968, Answer filed.

ORDER

March 14, 1968. Petition denied. Per Curiam.

ORDER

AND NOW, March 19, 1968, appellant having failed to proceed, a judgment of non pros is entered. By the Court.
July 12, 1968, Petition to remove judgment of non pros, filed.
July 18, 1968, Answer filed.

ORDER

August 5, 1968, Petition granted. Judgment of non pros removed. Daniel F. Daley, Esq., of Luzerne County is appointed to represent petitioner on appeal. By the Court.
August 7, 1968, Certified copies of Order sent to lower Court and to Daniel Daley, Esq.

ORDER

AND NOW, this 13th day of August, 1968, it is directed that the Order of August 5, 1968, appointing Daniel Daley, Esquire, of Luzerne County, to represent the Petitioner, Richard Oliver Joseph Mayberry, on appeal in the above captioned matter, be and the same is hereby revoked; and

IT IS FURTHER ORDERED that Peter Kanjorski, Esquire, of Luzerne County, be and is hereby appointed to represent the Petitioner, Richard Oliver Joseph Mayberry, on appeal in the above captioned matter. Per Curiam.

September 16, 1968, Appearance for appellant, filed.

September 27, 1968, Petition to continue, filed.

September 27, 1968, Answer filed.

September 27, 1968, Record filed.

ORDER

September 30, 1968. Petition granted. Per Curiam.

May 1, 1969, Petition for Extension of Time to File Petition for Reargument, filed.

May 8, 1969, Petition for waiver of counsel, filed.

ORDER

May 13, 1969. Petition granted with permission to file petition for reargument on or before May 26, 1969. Per Curiam.

ORDER

June 3, 1969, Petition granted, but counsel is directed to file a brief amicus curiae. Per Curiam.

In the Supreme Court of Pennsylvania Western District

Nos. 102 to 113 March Term, 1967

COMMONWEALTH OF PENNSYLVANIA

v.

HERBERT F. LANGNES ET AL.

Appeal from Judgments of Sentence of the Court of Oyer and Terminer of Allegheny County, No. 4672, September, 1965

APPEAL OF RICHARD MAYBERRY, ET AL.

Argued November 12, 1968

Before BELL, C. J. JONES, COHEN, EAGEN, O'BRIEN and ROBERTS, JJ.

Appeals, Nos. 102 to 113, inclusive, March T., 1967, from judgments of Court of Oyer and Terminer of Allegheny County, Sept. T., 1965, No. 4672, in case of Commonwealth v. Herbert F. Langnes, Richard Mayberry et al. Judgments affirmed.

Contempt of court.

Defendant adjudged guilty of contempt and judgments of sentence entered, opinion by FIOK, J. Defendant appealed.

OPINION BY MR. JUSTICE JONES, April 23, 1969

Herbert Langnes, Dominic Codispoti and Richard Mayberry were indicted by the Grand Jury of Allegheny County on two charges: (1) holding hostages in a penal institution and (2) prison breach. All three defendants were tried together and all three defendants were found guilty on both counts.

Richard Mayberry entered a plea of not guilty, waived his right to representation by counsel and chose to act as his own counsel at trial.[1]

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[1] The court appointed a representative of the Public Defender's office to act as Mayberry's consultant during trial.

On December 12, 1966, the court sentenced Mayberry to a term of imprisonment of not less than fifteen or more than thirty years on the first count and not less than five or more than ten years on the second count. These sentences were to be served consecutively at the expiration of any sentence Mayberry was already serving.

On the same day the court also sentenced Mayberry on eleven separate acts of criminal contempt which allegedly took place during the trial of the case and imposed a sentence of not less than one or more than two years for each separate act of criminal contempt, said sentences to be served consecutively at the expiration of the sentences imposed for the two crimes of which he had been convicted. From these judgments on the contempt charges Mayberry has filed the instant appeals.[2]

Mayberry in his brief presents three contentions: (1) that he was denied the right to trial by jury on the contempt charges in violation of the Sixth and Fourteenth Amendments to the United States Constitution; (2) that he was denied due process of law by being convicted and sentenced for criminal contempt without procedural safeguards; (3) that he has been subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution in being sentenced to a minimum of eleven and a maximum of twenty-two years on the contempt charges. Mayberry's appointed counsel in his brief raises the following issues: (1) that the court erred in failing to provide Mayberry with substantive constitutional safeguards by not apprising him of the nature and elements of the crime of criminal contempt, by not giving timely notice of the commission of criminal contempt, by not informing him of his right to counsel and in failing to provide him with counsel at the time of sentence; (2) that the statute providing for criminal contempt is unconstitutional as applied to the instant factual situation.

The contempt charges grew out of Mayberry's conduct during the course of the trial where he acted as his own counsel. An examination of the record reveals a course of conduct on Mayberry's part almost beyond belief and of an obviously and

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[2] On March 19, 1968, a judgment of non pros. was entered because of Mayberry's failure to file a brief, but on August 5, 1968, this Court removed the judgment of non pros. reinstated Mayberry's appeal and appointed counsel to represent him in these appeals. Both Mayberry and his counsel have each filed separate briefs on Mayberry's behalf.

patently planned and determined attempt on Mayberry's part to interfere with the administration of justice and to make a farce and mockery of his trial. Mayberry accused the trial judge of denying him a fair trial, called him a "hatchet man for the State" and a "dirty S. O. B.," stated he would not "be railroaded into any life sentence by any dirty tyrannical old dog like [the judge]," told the trial court "to keep [his] mouth shut," referred to the court as a "bum" and a "stumbling dog," accused the court of working for the prison authorities and of conducting a Spanish Inquisition. He further told the judge that he was in need of psychiatric treatment and was "some kind of nut." These few examples are indicative of Mayberry's outrageous conduct during the course of the trial. Moreover, in open court, Mayberry stated his intention of disrupting the court's charge to the jury and carried out his intention to such an extent that the court was finally forced to have him gagged, placed in a strait jacket and removed to an adjoining courtroom to which the charge to the jury was broadcast through a public address system. The record further demonstrates beyond any question that Mayberry's behavior was calculated and planned with the aim of disrupting the orderly procedure of the trial and the administration of justice.

Right to Trial by Jury

In *Duncan* v. *Louisiana*, 391 U.S. 145, 20 L. Ed. 2d 491 (1968), the United States Supreme Court held that the Constitution guaranteed the right to jury trial in serious criminal cases in state courts. In *Bloom* v. *Illinois*, 391 U.S. 194, 20 L. Ed. 2d 522 (1968), the Court was called upon to decide whether the Constitution guaranteed the right to a jury trial for a criminal contempt punished by a two-year prison sentence. Holding that "petty crimes need not be tried to a jury" and recognizing that the court had deemed it unnecessary under *Duncan* to fix "the exact location of the line between petty offenses and serious crimes," the court held that a criminal contempt punishable by a two-year prison sentence constitutes a serious crime which entitles a defendant to the right to trial by jury and that it is constitutional error to deny the defendant such right. If *Duncan* and *Bloom* are presently applicable, Mayberry would be entitled to a jury trial on the contempt charges.

However, the United States Supreme Court, in *DeStefano* v. *Woods*, 392 U.S. 631, 20 L. Ed. 2d 1308 (1968), held that *Duncan* and *Bloom* "should receive only prospective application." Since *Duncan* and *Bloom* were decided in 1968 and since Mayberry's trial took place in December, 1966, the rulings in *Duncan* and *Bloom* do not apply to Mayberry, and Mayberry is not entitled to a trial by jury on the contempt charges.

DENIAL OF DUE PROCESS

The contempt charges upon which Mayberry was sentenced constituted *direct* criminal contempts which took place in open court in the presence of the court and the jury. Punishment for direct criminal contempt may be inflicted summarily. See: *Philadelphia Marine Trade Association* v. *International Longshoremen's Association*, 392 Pa. 500, 509, 140 A. 2d 814 (1958).[3]

The Act of June 16, 1836, P. L. 784, § 23, 17 P.S. § 2041, provides, inter alia, as follows: "The power of the several courts of this commonwealth to issue attachments and to inflict summary punishments for contempts of court shall be restricted to the following cases, to wit: . . .

"III. To the misbehavior of any person in the presence of the court, thereby obstructing the administration of justice." In a direct criminal contempt, the court has the inherent power to protect its judicial dignity and conscience and to protect itself from insult and abuse. See: *Aungst Contempt Case*, 411 Pa. 595, 192 A. 2d 723 (1963). Section 24 of the Act of 1836, supra, provides: "The punishment of imprisonment for contempt as aforesaid shall extend only to such contempts as shall be committed in open court, and all other contempts shall be punished by fine only." (17 P.S. § 2042)

In *Weiss* v. *Jacobs*, 405 Pa. 390, 394, 395, 175 A. 2d 849 (1961), this Court said: "In In Re Oliver, 333 U.S. 257, at 275–276, the United States Supreme Court stated: 'due process of law, . . . requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf either by way of

[3] The Act of June 23, 1931, P. L. 925, § 1, 17 P.S. § 2047, provides for the due process requirements to which a defendant is entitled when charged with *indirect* criminal contempt.

defense or explanation. *The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the Judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the Court. . . . and where immediate punishment is essential to prevent "demoralization of the Court's authority" before the public.* If some essential elements of the offense are not personally observed by the Judge, . . . due process requires, . . . that the accused be accorded notice and a fair hearing. . . .'" (Emphasis added)

The instant contempt charges arose out of the misconduct and misbehavior of Mayberry before the court and all the actions and utterances upon which these contempt charges were based took place in front of the trial judge. Under such circumstances, the court had plenary power to punish summarily for such contumacious conduct. To hold otherwise would be to offend the inherent powers of a court, particularly when the misconduct and misbehavior were as outrageous as that of Mayberry in the instant case.

We find no evidence under the circumstances of a violation of the constitutional due process requirements so far as Mayberry is concerned.

Did the Sentences Constitute Cruel and Unusual Punishment?

The court below imposed not one but eleven sentences, each based on a separate contemptuous act of Mayberry. Each sentence was for one to two years.

The instant record is replete with instance after instance of contumacious conduct on Mayberry's part. Moreover, it is evident beyond question that such conduct was not only in defiance of the court and its dignity but was planned with a view to disrupting the orderly process of the trial and preventing and obstructing the proper administration of justice.

Under the instant circumstances, we conclude that the imposition of eleven one-to-two year sentences is not cruel and unusual punishment.

We now consider the several contentions made by Mayberry's court-appointed appellate counsel in his separate brief on behalf of Mayberry.

Whether the Court Erred in Failing To Advise Mayberry of the Nature and Elements of Criminal Contempt and That

His Actions Amounted to Criminal Contempt. Mayberry's counsel urges that it was the duty of the trial judge to warn Mayberry during the trial if and whenever his conduct became contemptuous, relying on *Glasser* v. *United States*, 315 U.S. 60, 86 L. Ed. 680 1942, *Ogren* v. *Rockford Star Printing Co.*, 288 Ill. 405, 123 N.E. 587 (1919), and *Sacher* v. *United States*, 343 U.S. 1, 96 L. Ed. 717 (1952). We find nothing in these authorities which mandated that the trial judge in the instant case should have on each and every occasion warned Mayberry of his contemptuous conduct. The language and actions of Mayberry, even though he is a layman, were of such a nature that he had every reason to know that his conduct was in contempt of court; moreover, it is evident from this record that Mayberry's conduct was part of a scheme and plan to disrupt and render chaotic the conduct of his trial. We see no reason, under the circumstances, why Mayberry on each and every occasion should have been warned of that of which he must have been fully aware. He knew that his conduct was outrageous and he deliberately planned such a course of conduct.

We find no merit in this contention.

Is the Act of 1836, Supra, Unconstitutional as Instantly Applied Because It Fails To Establish a Standard of Permissible Behavior and Because Its Terms Are Unclear and Indefinite?

We have carefully considered this contention of Mayberry's counsel and find it absolutely without merit.

The instant case presents an example of a person charged with a criminal offense who deliberately, consciously and intentionally enters upon his trial proposing to so obstruct, by his language and his actions, the orderly trial process in order to thwart the administration of justice. Such conduct cannot and should not be tolerated. To hold otherwise is to make a mockery of criminal trials and to render our courts subject to infamy and abuse.

While at first blush the totality of the sentences imposed might seem harsh, yet in view of Mayberry's conduct the severity of the sentences can be fully and completely justified. Mayberry was found guilty not only of criminal offenses but of having openly defied not only the court but the orderly process of law. As Mr. Justice JACKSON said in *Sacher* v. *United States*, supra (343 U.S. at 5): "The nature of the deportment was not such as merely to offend personal sensitivities of the judge, but it prejudiced the expeditious, orderly and dispassionate conduct of the trial."

Judgments of sentence affirmed.

Mr. Justice COHEN and Mr. Justice EAGEN concur in the result.

CONCURRING OPINION BY MR. JUSTICE ROBERTS

As to appellant's claim that he was denied the right to a jury trial, I concur in the result reached by the majority solely on the ground that *Bloom* v. *Illinois*, 391 U.S. 194, 88 S. Ct. 1477 (1968), is not retroactive in application. See *DeStefano* v. *Woods*, 392 U.S. 631, 88 S. Ct. 2093 (1968).

CONCURRING AND DISSENTING OPINION BY MR. JUSTICE O'BRIEN

I agree with the majority that Mayberry was not entitled to a jury trial. Even if *Bloom* v. *Illinois*, 391 U.S. 194, 88 S. Ct. 1477 (1968), applies to direct criminal contempts as well as indirect criminal contempts, which question I find it unnecessary to consider, *Bloom* has been held not to be retroactive. *DeStefano* v. *Woods*, 392 U.S. 631, 88 S. Ct. 2093 (1968). I thus concur in the affirmance of the contempt conviction.

However, I must dissent from that portion of the majority opinion which upholds the sentence imposed on Mayberry. Although appellate courts are naturally reluctant to interfere with the sentencing procedure, a matter within the discretion of the trial court, this Court has a duty to consider whether that discretion has been abused. *Commonwealth* v. *Edwards*, 380 Pa. 52, 110 A. 2d 216 (1955). The duty is particularly crucial in direct criminal contempt cases where no statutory limit is placed upon the trial judge's discretion. *Brown* v. *United States*, 359 U.S. 41, 79 S. Ct. 539 (1959); *Green* v. *United States*, 356 U.S. 165, 78 S. Ct. 632 (1958).

I wish to emphasize that I hold no brief whatsoever for appellant's utterly deplorable conduct and I sympathize with the trial judge for the indignities both he and the judicial system were made to suffer as a result of appellant's conduct. Nonetheless, I believe that the sentence imposed here exceeded all bounds of reasonableness. While the court below treated each of appellant's comments as a separate contempt and imposed eleven separate one to two year sentences to run consecutively, I think that a more realistic view of what occurred was

that there was only one contempt—appellant's trial conduct as a whole—and that for this he was given a sentence of eleven to twenty-two years, Cf. *Yates* v. *United States*, 355 U.S. 66, 78 S. Ct. 128 (1957).

My research discloses no case in which the punishment meted out even approaches that here. The majority quotes, as support for the sentence here, from *Sacher* v. *United States*, 343 U.S. 1, 5, 72 S. Ct. 451 (1952): "The nature of the deportment was not such as merely to offend personal sensitivities of the judge, but it prejudiced the expeditious, orderly and dispassionate conduct of the trial." Yet those held in contempt in *Sacher* were sentenced only to terms of up to six month's imprisonment for a course of conduct that was as flagrant a defiance of the orderly processes of court as that involved here. Sacher and his fellows, *inter alia*: "Insinuated that there was connivance between the Court and the United States Attorney . . . Repeatedly made charges against the Court of bias, prejudice, corruption, and partiality . . . Made a succession of disrespectful, insolent, and sarcastic comments and remarks to the Court . . . [etc.]." *United States* v. *Sacher*, 182 F. 2d 416, 431 (2d Cir. 1950).

Although there is no doubt that the dignity of our courts must be upheld, by the contempt process, if necessary, in a Commonwealth where assault and battery is punishable by a maximum of two years' imprisonment, larceny by a maximum of five, voluntary manslaughter by a maximum of twelve, rape by a maximum of fifteen, and second-degree *murder* by a maximum of twenty, a maximum sentence of twenty-two years for interference with the courtroom process and insults to the judge is cruel and unusual. I note that in title Three of The Penal Code of 1939, entitled "Offenses against Public Justice and Administration", of the thirty-one crimes enumerated, only two—perjury (seven years) and prison breach (ten years) carry a maximum sentence of more than five years. No crime in the category carries with it a penalty approaching the twenty-two years given appellant, and I must dissent from the imposition of that sentence.

530-318—74——2

Supreme Court of the United States
Term and Docket No. A–69 1389

RICHARD MAYBERRY, PETITIONER

v.

PENNSYLVANIA

DOCKET ENTRIES

[FILING DATE: JULY 23, 1969]

Supreme Court of Pennsylvania, Western District

Date	Proceedings and orders
	Counsel for petitioner: Ralph S. Spritzer, Curtis R. Reitz
	Counsel for respondent: Robert W. Duggan
July 19, 1969	Application for extension of time to file petition for certiorari filed.
July 23, 1969	Order extending time to file petition for certiorari. (Brennan, J., until 8–5–69)
July 23, 1969	Petition for writ of certiorari and affidavit in forma pauperis filed.
Sept. 17, 1969	Petition distributed.
Oct. 28, 1969	Response requested.
Dec. 12, 1969	Brief for respondent in opposition filed.
Dec. 18, 1969	Petition redistributed.
Jan. 8, 1970	Petitioner's reply brief filed.
Apr. 6, 1970	Motion for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. Case transferred from No. 657 Misc. to appellate docket and placed on summary calendar.
Apr. 15, 1970	Motion for appointment of counsel filed.
Apr. 15, 1970	Motion above distributed.
Apr. 27, 1970	Motion of petitioner for appointment of counsel granted. Ordered that Ralph S. Spritzer, Esquire, of Philadelphia, Pa., a member of the Bar of this Court be appointed to serve as counsel for petitioner in this case.
May 18, 1970	Order above revoked.
May 18, 1970	Order that Curtis R. Reitz, of Philadelphia, Pa., a member of the Bar of this Court is appointed to serve as counsel for petitioner in this case.
Sept. 17, 1970	Brief for respondent filed.
Sept. 23, 1970	Brief for petitioner filed.
Oct. 10, 1970	Motion of Carol Mary Los for leave to participate in oral argument, prohac vice, filed.
Oct. 14, 1970	Motion above distributed.
Oct. 26, 1970	Motion of Carol Mary Los for leave to participate in oral argument, prohac vice, is granted.
Nov. 25, 1970	Appendix filed.
Dec. 17, 1970	ARGUED.
Jan. 20, 1971	Adjudged to be vacated and remanded.
Feb. 18, 1971	Mandate issued.

MAYBERRY v. PENNSYLVANIA

January 20, 1971

Mr. Justice DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him to not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

The Supreme Court of Pennsylvania affirmed by a divided vote. 434 Pa. 478, 255 A.2d 131. The case is here on a petition for writ of certiorari. 397 U.S. 1020, 90 S.Ct. 1266, 25 L.Ed.2d 530.

Petitioner's conduct at the trial comes as a shock to those raised in the Western tradition that considers a courtroom a hallowed place of quiet dignity as far removed as possible from the emotions of the street.

(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial procedures. Petitioner said: "It seems like the court has the intentions of railroading us" and moved to disqualify the judge. The motion was denied. Petitioner's other motions, including his request that the deputy sheriffs in the courtroom be dressed as civilians, were also denied. Then came the following colloquy:

> Mr. MAYBERRY. I would like to have a fair trial of this case and like to be granted a fair trial under the Sixth Amendment.
>
> The COURT. You will get a fair trial.
>
> Mr. MAYBERRY. It doesn't appear that I am going to get one the way you are overruling all our motions and that, and being like a hatchet man for the State.

The COURT. This side bar is over.
Mr. MAYBERRY. Wait a minute, Your Honor.
The COURT. It is over.
Mr. MAYBERRY. You dirty sonofabitch.

(2) The second episode took place on the eighth day of the trial. A codefendant was cross-examining a prison guard and the court sustained objections to certain questions:

Mr. CODISPOTI. Are you trying to protect the prison authorities, Your Honor? Is that your reason?
The COURT. You are out of order, Mr. Codispoti. I don't want any outbursts like that again. This is a court of justice. You don't know how to ask questions.
Mr. MAYBERRY. Possibly Your Honor doesn't know how to rule on them.
The COURT. You keep quiet.
Mr. MAYBERRY. You ought to be Gilbert and Sullivan the way you sustain the district attorney every time he objects to the questions.
The COURT. Are you through? When your time comes you can ask questions and not make speeches.

(3) The next charge stemmed from the examination of an inmate about a riot in prison in which petitioner apparently was implicated. There were many questions asked and many objections sustained. At one point the following outburst occurred:

Mr. MAYBERRY. Now, I'm going to produce my defense in this case and not be railroaded into any life sentence by any dirty, tyrannical old dog like yourself.
The COURT. You may proceed with your questioning, Mr. Mayberry.

(4) The fourth charge grew out of an examination of another defense witness:

By Mr. MAYBERRY:
Q. I ask you, Mr. Nardi, is that area, the handball court, is it open to any prisoner who wants to play handball, who care to go to that area to play handball?
A. Yes.
Q. Did you understand the prior question when I asked you if it was freely open and accessible area?

The COURT. He answered it. Now, let's go on.

Mr. MAYBERRY. I am asking him now if he understands——

The COURT. He answered it. Now, let's go on.

Mr. MAYBERRY. I ask Your Honor to keep your mouth shut while I'm questioning my own witness. Will you do that for me?

The COURT. I wish you would do the same. Proceed with your questioning.

(5) The fifth charge relates to a protest which the defendants made that at the end of each trial day they were denied access to their legal documents—a condition which the trial judge shortly remedied. The following ensued:

Mr. MAYBERRY. You're a judge first. What are you working for? The prison authorities, you bum?

Mr. LIVINGSTON. I have a motion pending before Your Honor.

The COURT. I would suggest——

Mr. MAYBERRY. Go to hell. I don't give a good God damn what you suggest, you stumbling dog.

Meanwhile one defendant told the judge if he did not get access to his papers at night he'd "blow your head off." Another defendant said he would not sit still and be "kowtowed and be railroaded into a life imprisonment." Then the following transpired:

Mr. MAYBERRY. You started all this bullshit in the beginning.

The COURT. You keep quiet.

Mr. MAYBERRY. Wait a minute.

The COURT. You keep quiet.

Mr. MAYBERRY. I am my own counsel.

The COURT. You keep quiet.

Mr. MAYBERRY. Are you going to gag me?

The COURT. Take these prisoners out of here. We will take a ten minute recess, members of the jury.

(6) The sixth episode happened when two of the defendants wanted to have some time to talk to a witness whom they had called. The two of them had had a heated exchange with the judge when the following happened:

Mr. MAYBERRY. Just one moment, Your Honor.

The COURT. This is not your witness, Mr. Mayberry. Keep quiet.

Mr. MAYBERRY. Oh, yes, he is my witness, too. He is my witness, also. Now, we are at the penitentiary and in seclusion. We can't talk to any of our witnesses prior to putting them on the stand like the District Attorney obviously has the opportunity, and as he obviously made use of the opportunity to talk to his witnesses. Now——

The COURT. Now, I have ruled, Mr. Mayberry.

Mr. MAYBERRY. I don't care what you ruled. That is unimportant. The fact is——

The COURT. You will remain quiet, sir, and finish the examination of this witness.

Mr. MAYBERRY. No, I won't be quiet while you try to deny me the right to a fair trial. The only way I will be quiet is if you have me gagged. Now, if you want to do that, that is up to you; but in the meantime I am going to say what I have to say. Now, we have the right to speak to our witnesses prior to putting them on the stand. This is an accepted fact of law. It is nothing new or unusual. Now, you are going to try to force us to have our witness testify to facts that he has only a hazy recollection of that happened back in 1965. Now, I believe we have the right to confer with our witness prior to putting him on the stand.

The COURT. Are you finished?

Mr. MAYBERRY. I am finished.

The COURT. Proceed with your examination.

(7) The seventh charge grew out of an examination of a codefendant by petitioner. The following outburst took place:

By Mr. MAYBERRY:

Q. No. Don't state a conclusion because Gilbert is going to object and Sullivan will sustain. Give me facts. What leads you to say that?

Later petitioner said:

Mr. MAYBERRY. My witness isn't being in an inquisition, you know. This isn't the Spanish Inquisition.

Following other exchanges with the court, petitioner said:

Mr. MAYBERRY. Now, just what do you call proper?

I have asked questions, numerous questions and everyone you said is improper. I have asked questions that my adviser has given me, and I have repeated these questions verbatim as they came out of my adviser's mouth, and you said they are improper. Now just what do you consider proper?

The COURT. I am not here to educate you, Mr. Mayberry.

Mr. MAYBERRY. No. I know you are not. But you're not here to railroad me into no life bit, either.

Mr. CODISPOTI. To protect the record——

The COURT. Do you have any other questions to ask this witness?

Mr. MAYBERRY. You need to have some kind of psychiatric treatment, I think. You're some kind of a nut. I know you're trying to do a good job for that Warden Maroney back there, but let's keep it looking decent anyway, you know. Don't make it so obvious, Your Honor.

(8) A codefendant was removed from the courtroom and when he returned petitioner asked for a severance.

Mr. MAYBERRY. I have to ask for a severance.

The COURT. I have heard that before. It is denied again. Let's go on. (Exception noted.)

Mr. MAYBERRY. This is the craziest trial I have ever seen.

The COURT. You may call your next witness, Mr. Mayberry.

Petitioner wanted to call witnesses from the penitentiary whose names had not been submitted earlier and for whom no subpoenas were issued. The court restricted the witnesses to the list of those subpoenaed.

Mr. MAYBERRY. Before I get to that I wish to have a ruling, and I don't care if it is contempt or whatever you want to call it, but I want a ruling for the record that I am being denied these witnesses that I asked for months before this trial ever began.

(9) The ninth charge arose out of a ruling by the court on a question concerning the availability of tools to prisoners in their cells.

> The COURT. I have ruled on that, Mr. Mayberry. Now proceed with your questioning, and don't argue.
>
> Mr. MAYBERRY. You're arguing. I'm not arguing, not arguing with fools.

(10) The court near the end of the trial had petitioner ejected from the courtroom several times. The contempt charge was phrased as follows by the court:

> On December 7, 1966, you have created a despicable scene in refusing to continue calling your witnesses and in creating such consternation and uproar as to cause a termination of the trial.

(11) As the court prepared to charge the jury, petitioner said:

> Before Your Honor begins the charge to the jury defendant Mayberry wishes to place his objection on the record to the charge and to the whole proceedings from now on, and he wishes to make it known to the Court now that he has no intention of remaining silent while the Court charges the jury, and that he is going to continually object to the charge of the Court to the jury throughout the entire charge, and he is not going to remain silent. He is going to disrupt the proceedings verbally throughout the entire charge of the Court, and also he is going to be objecting to being forced to terminate his defense before he was finished.

The court thereupon had petitioner removed from the courtroom and later returned gagged. But petitioner caused such a commotion under gag that the court had him removed to an adjacent room where a loudspeaker system made the courtroom proceedings audible. The court phrased this contempt charge as follows:

> On December 9, 1966, you have constantly, boisterously, and insolently interrupted the Court during its attempts to charge the jury, thereby creating an atmosphere of utter confusion and chaos.

These brazen efforts to denounce, insult, and slander the court and to paralyze the trial are at war with the concept of justice under law. Laymen, foolishly trying to defend them-

selves, may understandably create awkward and embarrassing scenes. Yet that is not the character of the record revealed here. We have here downright insults of a trial judge, and tactics taken from street brawls and transported to the courtroom. This is conduct not "befitting an American courtroom," as we said in Illinois v. Allen, 397, U.S. 337, 346, 90 S.Ct. 1057, 1062, 25 L.Ed.2d 353, and criminal contempt is one appropriate remedy. *Id.*, at 344–345, 90. S.Ct., at 1061–1062.

As these separate acts or outbursts took place, the arsenal of authority described in *Allen* was available to the trial judge to keep order in the courtroom. He could, with propriety, have instantly acted, holding petitioner in contempt, or excluding him from the courtroom, or otherwise insulating his vulgarity from the courtroom. The Court noted in Sacher v. United States, 343 U.S. 1, 10, 72 S.Ct. 451, 455, 96 L.Ed. 717, that, while instant action may be taken against a lawyer who is guilty of contempt, to pronounce him guilty of contempt is "not unlikely to prejudice his client." Those considerations are not pertinent here where petitioner undertook to represent himself. In *Sacher* the trial judge waited until the end of the trial to impose punishment for contempt, the Court saying:

> If we were to hold that summary punishment can be imposed only instantly upon the event, it would be an incentive to pronounce, while smarting under the irritation of the contemptuous act, what should be a well-considered judgment. We think it less likely that unfair condemnation of counsel will occur if the more deliberate course be permitted. *Id.*, at 11, 75 S.Ct., at 456.

Generalizations are difficult. Instant treatment of contempt where lawyers are involved may greatly prejudice their clients but it may be the only wise course where others are involved. Moreover, we do not say that the more vicious the attack on the judge the less qualified he is to act. A judge cannot be driven out of a case. Where, however, he does not act the instant the contempt is committed, but waits until the end of the trial, on balance, it is generally wise where the marks of the unseemly conduct have left personal stings to ask a fellow judge to take his place. What Chief Justice Taft said in Cooke v. United States, 267 U.S. 517, 539, 45 S.Ct. 390, 395, 69 L.Ed. 767, is relevant here:

> The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice, and in maintaining the authority and dignity of the court, is most important and indispensable. But its exercise is a delicate one, and care is needed to avoid arbitrary or oppressive conclusions. This rule of caution is more mandatory where the contempt charged has in it the element of personal criticism or attack upon the judge. The judge must banish the slightest personal impulse to reprisal, but he should not bend backward, and injure the authority of the court by too great leniency. The substitution of another judge would avoid either tendency but it is not always possible. Of course where acts of contempt are palpably aggravated by a personal attack upon the judge in order to drive the judge out of the case for ulterior reasons, the scheme should not be permitted to succeed. But attempts of this kind are rare. All of such cases, however, present difficult questions for the judge. All we can say upon the whole matter is that, where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place.

We conclude that that course should have been followed here, as marked personal feelings were present on both sides.

Whether the trial be federal or state, the concern of due process is with the fair administration of justice. At times a judge has not been the image of "the impersonal authority of law" (Offutt v. United States, 348 U.S. 11, 17, 75 S. Ct. 11, 15, 99 L. Ed. 11) but has become so "personally embroiled" with a lawyer in the trial as to make the judge unfit to sit in judgment on the contempt charge.

> The vital point is that in sitting in judgment on such a misbehaving lawyer the judge should not himself give vent to personal spleen or respond to a personal grievance. These are subtle matters, for they concern the ingredients of what constitutes justice. Therefore, justice must satisfy the appearance of justice. *Id.*, at 14, 75 S. Ct., at 13.

Offutt does not fit this case, for the state judge in the instant controversy was not an activist seeking combat. Rather, he was the target of petitioner's insolence. Yet a judge, vilified as was this Pennsylvania judge, necessarily becomes embroiled in a running, bitter controversy. No one so cruelly slandered is likely to maintain that calm detachment necessary for fair adjudication. In re Murchison(349 U.S. 133, 72 St. Ct. 623, 99 L. Ed. 942, was a case where a judge acted under state law as a one-man grand jury and later tried witnesses for contempt who refused to answer questions propounded by the "judge-grand jury." We held that since the judge who sat as a one-man grand jury was part of the accusatory process he "cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused." *Id.*, at 137, 75 S. Ct., at 626. "Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer." *Ibid.*

It is, of course, not every attack on a judge that disqualifies him form sitting. In Unga v. Garafite, 376 U.S. 575, 84 S. Ct. 841, 11 L. Ed. 2d 921, we ruled that a lawyer's challenge, though "disruptive, recalcitrant and disagreeable commentary," was still not "an insulting attack upon the integrity of the judge carrying such potential for bias as to require disqualification." *Id.*, at 584, 84 S. Ct. at 847. Many of the words leveled at the judge in the instant case were highly personal aspersions, even "fighting words"—"dirty sonofabitch", "dirty tyrannical old dog," "stumbling dog," and "fool." He was charged with running a Spanish Inquisition and told to "Go to hell" and "Keep your mouth shut." Insults of that kind are apt to strike "at the most vulnerable and human qualities of a judge's temperament." Bloom v. Illinois, 391 U.S. 194, 202, 88 S. Ct. 1477, 1482, 20 L. Ed. 2d 522.

Our conclusion is that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a public trial before a judge other than the one reviled by the contemnor. See In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682. In the present case that requirement can be satisfied only if the judgment of contempt is vacated so that on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, sits in judgment on the conduct of petitioner as shown by the record.

Vacated and remanded.

Mr. Justice BLACK concurs in the judgment and with all the opinion except that part which indicates that the judge without a jury could have convicted Mayberry of contempt instantaneously with the outburst.

Mr. Chief Justice BURGER, concurring.

I concur in the Court's opinion and add these additional observations chiefly for emphasis. Certain aspects of the problem of maintaining in courtrooms the indispensable atmosphere of quiet orderliness are crucial. Without order and quiet, the adversary process must fail. Three factors should be noted: (1) as Mr. Justice DOUGLAS has said, the trial was conducted without the guidance afforded by Mr. Justice Black's opinion for the Court in Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353; (2) although the accused was afforded counsel at his trial he asserted a right to act as his own counsel and the court permitted him to do so; (3) we are not informed whether Pennsylvania has a statute covering obstruction of justice that would reach the conduct of the accused shown by this record.

(1)

As the Court's opinion suggests, the standards of Illinois v. Allen, *supra*, would have enabled the trial judge to remove the accused from the courtroom after his first outrageous actions and words, and to summarily punish him for contempt. The contempt power, however, is of limited utility in dealing with an incorrigible, a cunning psychopath, or an accused bent on frustrating the particular trial or undermining the processes of justice. For such as these, summary removal from the courtroom is the really effective remedy. Indeed it is one, as this case shows, where removal could well be a benefit to the accused in the sense that one episode of contemptuous conduct would be less likely to turn a jury against him than 11 episodes. As noted by Mr. Justice Black in Illinois v. Allen, and Mr. Justice DOUGLAS here, a fixed rule to fit every situation is not feasible; plainly summary removal is the most salutary remedy in cases such as this.

(2)

Here the accused was acting as his own counsel but had a court-appointed lawyer as well. This suggests the wisdom of the trial judge in having counsel remain in the case even in the

limited role of a consultant. When a defendant refuses counsel, as he did here, or seeks to discharge him, a trial judge is well advised—as so many do—to have such "standby counsel" to perform all the services a tained advocate would perform ordinarily by examination and cross-examination of witnesses, objecting to evidence and making closing argument. No circumstance that comes to mind allows an accused to interfere with the absolute right of a trial judge to have such "standby counsel" to protect the rights of accused persons "foolishly trying to defend themselves," as Mr. Justice DOUGLAS so aptly described it. In every trial there is more at stake than just the interests of the accused; the integrity of the process warrants a trial judge's exercising his discretion to have counsel participate in the defense even when rejected. A criminal trial is not a private matter; the public interest is so great that the presence and participation of counsel, even when opposed by the accused, is warranted in order to vindicate the process itself. The value of the precaution of having independent counsel, even if unwanted, is underscored by situations where the accused is removed from the courtroom under Illinois v. Allen. The presence of counsel familiar with the case would at the very least blunt Sixth Amendment claims, assuming they would have merit, when the accused has refused legal assistance and then brought about his own removal from the proceedings.

(3)

There are other means to cope with grave misconduct in the courtroom, whether that of the accused, his counsel, spectators, or others. Statutes defining obstruction of justice have long been in force in many States, with penalties measured in years of confinement. Such statutes, where available, are an obvious response to those who seek to frustrate a particular trial or undermine the processes of justice generally.

A review of this record warrants a closing comment on the exemplary patience of the trial judge under provocation few human beings could accept with equanimity. Our holding that contempt cases with penalties of the magnitude imposed here should be heard by another judge does not reflect on his performance; it relates rather to a question of procedure.

Mr. Justice HARLAN, concurring.

I concur in the judgment of reversal solely on the ground that these contempt convictions must be regarded as infected by the fact that the unprecedented long sentence of 22 years which they carried was imposed by a judge who himself had been the victim of petitioner's shockingly abusive conduct. That circumstance seems to me to deprive the contempt proceeding of the appearance of evenhanded justice which is at the core of due process. For this reason I think the contempt convictions must be set aside leaving the State free to try the contempt specifications before another judge or to proceed otherwise against this petitioner.

It is unfortunate that this Court's decision in Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970), was not on the books at the time the criminal case against this petitioner was on trial. The courses which that decision lays open to trial judges for coping with outrageous courtroom tactics of the sort engaged in by this petitioner would doubtless have enabled Judge Fiok to deal with the petitioner in a manner that would have obviated the regrettable necessity for setting aside this contempt conviction.

In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division

COMMONWEALTH

vs.

DOMINICK CODISPOTI AND HERBERT FRED LANGNES

No. 4672 of 1965

DOCKET ENTRIES

Charge: Contempt.

Judge: Fiok.

Citation, filed Dec. 7, 1971.

Motion for the Subpoena of a Defense Witnesses, filed Dec. 20, 1971.

Motion for Trial by Jury, filed Dec. 20, 1971.

Motion to require the Commonwealth to proceed, if all all, by a criminal complaint, a preliminary hearing, and an indictment by the Grand Jury, filed Dec. 20, 1971.

Notice of Appeal and Acceptance of Service, filed.

Acceptance of Service, filed Jan. 21, 1972.

Certiorari to Supreme Court at No. 61 March Term 1972 filed Jan. 21, 1972.

Remittitur to Supreme Court at No. 61 March Term 1972 filed July 13, 1973.

Order Per Curiam filed.

In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division

No. 4672 of 1965

COMMONWEALTH OF PENNSYLVANIA

vs.

HERBERT FRED LANGNES, DEFENDANT

CITATION

And Now, December 6, 1971, Herbert Fred Langnes, defendant herein, is cited for direct criminal contempt of court upon the following charges;

1. That while being tried by a jury before Albert A. Fiok, J. on November 28, 1966, he, the defendant, accused the court of conspiracy by saying, "For the record, before he begins again, I want the record to show this is another proof of conspiracy between this Court and institution.

2. That while on trial as aforesaid on November 29, 1966, he, the defendant, threatened to blow the trial judge's head off, by saying, "If I have to blow your head off, that's exactly what I'll do. I don't give a damn if its on the record or not. If I got to use force, I will. That's what the hell I'm going to do."

3. That while on trial as aforesaid on December 1, 1966, he, the defendant, accused and threatened the court by saying, "Like I told you, you force this trial on me—you going to give me an illegal trial, I told you before what I was going to do to you, and I mean it. Now I refuse to go on with this trial if you are going to railroad me and badger my witnesses, force me to an unfair trial, that is exactly what I am going to do, punk. I'm going to blow your head off. You understand that?"

4. That while on trial as aforesaid on December 5, 1966, he, the defendant, told the court to "Go to hell." and accused the court of misconduct by saying, "One reason, you obviously have gotten in contact with the local papers to sharpen the

hatchet over the heads of the defendants accusing them of causing the taxpayers fifty grand which as a result gave this hearing a prejudicial atmosphere. I would like to state here for the record, and for the papers, if need be, it is not us that is costing the taxpayers money. It is you, Mr. Maroney, and the Commonwealth that is costing the taxpayers money."

5. That while on trial as aforesaid on December 5, 1966, he, the defendant, made scurrilous remarks to the court by saying, "For the record, I would like to state that as far as my personal opinion is concerned, communist Russia, communist China, and Cuba need men like you. I think wherever you came from you infiltrated the courts and the whole place might as well be communist Russia."

6. That while on trial as aforesaid on December 9, 1966, he, the defendant, threatened the life of the court by saying, "I object to what you did to my two codefendants and I swear on my mother's name that I will keep my promise to you, the two threats I made. Don't worry about me interrupting during your summation. I won't even dignify these stinking proceedings, punk, go to hell, and I will shake hands in hell with you. I will be damned to you." Also, he, the defendant, said, "You are a dead man, stone dead. Your Honor."

In pursuance of the citation hereinabove set forth it is ordered that the 17th day of December, 1971, at 10:00 A.M. is set for trial in Courtroom No. 1, Court House, Pittsburgh, Pennsylvania upon the charges of direct criminal contempt of court the defendant is ordered to appear before the court on said date and to show cause, if any he has, why he should not be adjudged in contempt of court and penalized according to law.

This Citation is to be served on Herbert Fred Langnes, defendant herein, by registered mail, return receipt requested, at the State Correctional Institution at Graterford, Graterford, Pennsylvania 19426.

The Bureau of Correction is directed to transport defendant to the Western Correctional Diagnostic & Classification Center at Pittsburgh, Pennsylvania, and the Sheriff of Allegheny County is directed to bring the defendant, Herbert Fred Langnes, from said institution at Pittsburgh before the Court at the time set for trial. Upon disposition made at the trial,

the Sheriff of Allegheny County is directed to return the defendant to the Western Correctional Diagnostic & Classification Center and thereafter the defendant is to be returned by the Bureau of Correction to his place of confinement.

The Public Defender is hereby appointed to represent the defendant, Herbert Fred Langnes.

ALBERT A. FIOK, *Judge*,
5th Judicial District.

In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division

No. 4672 of 1965

COMMONWEALTH OF PENNSYLVANIA

vs.

DOMINICK CODISPOTI, DEFENDANT

CITATION

And Now, December 6, 1971, Dominick Codispoti, defendant herein, is cited for direct criminal contempt of court upon the following charges:

1. That while being tried by a jury before Albert A. Fiok, J. on November 18, 1966, he, the defendant, accused the court of trying to protect the prison authorities by saying, "Are you trying to protect the prison authorities, Your Honor? Is that your reason?"

2. That while on trial as aforesaid on November 29, 1966, he, the defendant, accused the court of kowtowing and railroading the defendant into life imprisonment by saying ". . . it is only because the defendants in this case will not sit still and be kowtowed and be railroaded into a life imprisonment."

3. That while on trial as aforesaid on November 30, 1966, he, the defendant, called the judge "Caesar" and accused the court of misconduct by saying, "You're trying to railroad us." and ". . . I have never come across such a tyrannical display of corruption in my life."

4. That while on trial as aforesaid on December 1, 1966, he, the defendant, addressed the Court in an insolent and derogatory manner by saying, "Are you going to tell me my co-dendant is not crazy? You must be crazy to try me with him."

5. That while on trial as aforesaid on December 2, 1966, he, the defendant, accused the Court of criminal conspiracy between it and prison officials by saying, "I further intend to prove there is a conspiracy between the prison authorities and this Court."

6. That while on trial as aforesaid on December 8, 1966, he, the defendant, created a despicable scene and refused to continue with the calling of his witnesses unless the Court ordered a mistrial, and in general creating an uproar, such an uproar as to cause the termination of the trial.

7. That while on trial as aforesaid on December 9, 1966, he, the defendant, by constant and boisterous and insolent conduct interrupted the Court in its attempts to charge the jury, thereby creating an atmosphere of utter confusion and chaos.

In pursuance of the citation hereinabove set forth, it is ordered that the 16th day of December, 1971, at 10:30 A.M. is set for trial in Courtroom No. 1, Court House, Pittsburgh, Pennsylvania, upon the charge of direct criminal contempt of court and the defendant is ordered to appear before the court on said date and to show cause, if any he has, why he should not be adjudged in contempt of court and penalized according to law.

This Citation is to be served on Dominick Codispoti, defendant herein, by registered mail, return receipt requested at the State Correctional Institution at Huntingdon, Huntingdon, Pennsylvania.

The Bureau of Correction is directed to transport defendant to the Western Correctional Diagnostic & Classification Center at Pittsburgh, and the Sheriff of Allegheny County is directed to bring the defendant, Dominick Codispoti, from said institution at Pittsburgh before the court at the time set for trial. Upon disposition made at the trial, the Sheriff of Allegheny County is directed to return the defendant to the Western Correctional Diagnostic & Classification Center, and thereafter the defendant is to be returned by the Bureau of Correction to his place of confinement.

The Public Defender is hereby appointed to represent the defendant, Dominick Codispoti.

ALBERT A. FIOK,
Judge, 5th Judicial District.

In The Court of Common Pleas of Allegheny County, Pennsylvania

Opinion

(Filed September 26, 1972)

Van Der Voort, J.

Hearing in the captioned case was had in this Court commencing December 15, 1971 in accordance with the U.S. Supreme Court decision in *Mayberry* v. *State of Pennsylvania.* 400 U.S. 445, 91 S. Ct. 499 (1971), vacating a judgment of contempt and remanding for trial before a Judge other than the original Trial Judge.

A vast amount of time and effort has been expended to date to insure that these Defendants' rights have been protected. Inasmuch as the individual acts of contempt have been chronicled over and over again in previous Trial Court and Appellate Court Opinions, it is not necessary to detail them here again.

With reference to the record in this case, however, an objective review of it compels the conclusion on the part of any reader, whether one learned in the law or a layman, that the protection of their rights was not the concern of the Defendants in any of the prior proceedings nor was their conduct the product of ignorance or inadvertence, instead it was a studied attempt to thwart the judicial process and although, as such, its ultimate failure is certain, it has a measure of success to the extent that a final adjudication has not been reached after almost six years.

With reference to the instant proceeding, the only points in issue are the validity of the sentences. The question of guilt of contemptuous conduct has been confirmed by both the Supreme Court of Pennsylvania in the case of *Mayberry Appeal,* 434 Pa. 478, 255 A. 2d. 131 (1969) and by the U.S. Supreme Court in *Mayberry* v. *State of Pennsylvania,* 400 U.S. 455, 91 S. Ct. 499 (1971), therefore testimony at this hearing was limited to the record. Defendants claim a right of trial by jury. Such contention in these specific cases is totally without

merit. These cases are controlled by the decision in *Mayberry* v. *State of Pennsylvania*, supra, which did not require a jury trial.[1]

The U.S. Supreme Court in remanding the Mayberry case stated specifically:

> "Our conclusion is that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a public trial *before a judge* other than the one reveiled by the contemnor. See 'In re Oliver' 333 U.S. 257. In the present case that requirement can be satisfied only if the judgment of contempt is vacated so that on remand *another judge*, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, sits in judgment on the conduct of petitioner as shown by the record."
>
> (Italics supplied.)

The case of *Commonwealth* v. *Bethea, et al.* 445 Pa. 161, 282 A.2d. 246 (1971) which requires a jury trial in serious criminal contempt cases is not applicable to the instant cases because the questions of guilt to which the juries' decisions would be limited had already been adjudicated adversely to the Defendants[2] by two appellate courts. Furthermore, in the instant cases no term of imprisonment in excess of six months was imposed for any one offense. The offenses for which sentences were imposed occurred at different times and on different dates.

These Defendants were given patient and fair hearings. The sentences imposed were moderate in comparison to the invectives hurled at the Court. For the foregoing reasons, the Court made its findings and imposed the sentences in these cases.

ROBERT VAN DER VOORT, J.

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[1] Only one Justice felt that a jury trial should be had.

[2] The contemptuous conduct of each of the Defendants was substantially similar in each of the cases.

In the Supreme Court of Pennsylvania
Western District

No. 62 March Term, 1972

COMMONWEALTH OF PENNSYLVANIA

v.

RICHARD OLIVER JOSEPH MAYBERRY,
DOMINICK CODISPOTI AND
HERBERT FRED LANGNES

APPEAL OF HERBERT FRED LANGNES

DOCKET ENTRIES

Appeal from the judgment of sentence of December 20, 1971, of the Court of Common Pleas, Criminal Division, of Allegheny County at No. 4672 of 1965. (Contempt)

January 17, 1972, Appeal and affidavit filed and writ exist, returnable first Monday of March, 1972.

January 21, 1972, Appearance for appellee, filed.

February 18, 1972, Stipulation for continuance to the September 1972 Session filed.

August 25, 1972, Petition to proceed in forma pauperis, filed.

ORDER

September 7, 1972. Petition granted. Per Curiam.

September 12, 1972, Motion to Dismiss Appeal, filed.

September 15, 1972, Answer filed.

ORDER

NOW, this 19th day of September, 1972, the within Motion to Dismiss the Appeal is denied.

Argument on the appeal is continued to the March Session, 1973, of this Court in Pittsburgh. The Public Defender representing the Defendants, is directed to file as promptly as

possible brief on behalf of Defendants so that the Commonwealth may have sufficient opportunity to prepare a brief in support of the Commonwealth's position.

By the Court.

JONES, B. R., *Chief Justice.*

January 5, 1973, Record and Testimony, filed.

March 14, 1973, Petition for Continuance, with consent, filed.

ORDER

NOW, this 15th day of March, 1973, it appearing the Assistant District Attorney who prepared this matter has undergone surgery, on motion by the Commonwealth the argument on the appeal is continued until the April Sessions, 1973, of this Court in Philadelphia.

It is further directed that John J. Dean, Esq. continue to represent the defendant, Richard Mayberry, on this appeal, the said John J. Dean being Chief-Appellate Division on the Public Defender's Staff of Allegheny County. Per Curiam.

March 16, 1973, Appearance for appellee (2) filed.

April 24, 1973, Argued.

DECISION

July 2, 1973. The judgment of contempt is affirmed. Per Curiam.

Mr. Justice Manderino filed a dissenting opinion. July 13, 1973, Remitted.

For appellant: *John J. Dean, Fred E. Baxter, Jr.*, Office of Public Defender.

For appellee: *Robert W. Duggan*, District Attorney, *Robert L. Eberhardt*, Assistant District Attorney, *J. Kent Culley*, Assistant District Attorney.

In TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court at Pittsburgh, Pa. this 27th day of July, 1973.

———— ————, *Prothonotary.*

In the Supreme Court of Pennsylvania, Western District

COMMONWEALTH OF PENNSYLVANIA

v.

RICHARD OLIVER JOSEPH MAYBERRY, DOMINICK CODISPOTI AND HERBERT FRED LANGNES

No. 61 March Term, 1972

APPEAL OF DOMINICK CODISPOTI

DOCKET ENTRIES

Appeal from the judgment of sentence of December 17, 1971, of the Court of Common Pleas, Criminal Division, of Allegheny County at No. 4672 of 1965. (Contempt)

January 17, 1972, Appeal and affidavit filed and writ exit, returnable first Monday of March 1972.

January 21, 1972, Appearance for appellee, filed.

February 18, 1972, Stipulation for continuance to the September 1972 Session, filed.

August 25, 1972, Petition to proceed in forma pauperis, filed.

ORDER

September 7, 1972, Petition granted. Per Curiam.

September 12, 1972, Motion to Dismiss Appeal, filed.

September 15, 1972, Answer filed.

ORDER

NOW, this 19th day of September 1972, the within Motion to Dismiss the Appeal is denied.

Argument on the appeal is continued to the March Session, 1973, of this Court in Pittsburgh. The Public Defender, representing the Defendants, is directed to file as promptly as possible brief on behalf of Defendants so that the Commonwealth

may have sufficient opportunity to prepare a brief in support of the Commonwealth's position.

By the Court.

JONES, B. R. *Chief Justice.*

January 5, 1973, Record and Testimony, filed.

March 14, 1973, Petition for Continuance, with consent, filed.

ORDER

NOW this 15th day of March, 1973, it appearing the Assistant District Attorney who prepared this matter has undergone surgery, on motion by the Commonwealth the argument on the appeal is continued until the April Sessions, 1973, of this Court in Philadelphia.

It is further directed that John J. Dean, Esq. continue to represent the defendant, Richard Mayberry, on this appeal, the said John J. Dean being Chief-Appellate Division on the Public Defender's staff of Allegheny County. Per curiam.

March 16, 1973, Appearance for appellee (2) filed.

April 24, 1973, Argued.

DECISION

July 2, 1973. The judgment of contempt is affirmed. Per curiam.

Mr. Justice MANDERINO filed a dissenting opinion. July 13, 1973, Remitted.

For appellant: *John J. Dean, Fred E. Baxter, Jr.*, Office of Public Defender.

For appellee: *Robert W. Duggan, District Attorney, Robert L. Eberhardt*, Assistant District Attorney, *J. Kent Culley*, Assistant District Attorney.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court at Pittsburgh, Pa. this 27th day of July, 1973.

——— ———, *Prothonotary.*

[Filed: July 2, 1973]

[J. 155]

In the Supreme Court of Pennsylvania, Western District

Nos. 60, 61 and 62 March Term, 1972

COMMONWEALTH OF PENNSYLVANIA

v.

RICHARD OLIVER JOSEPH MAYBERRY, DOMINICK CODISPOTI, AND HERBERT FRED LANGNES, APPELLANTS

Appeal from the Judgments of Contempt of the Court of Common Pleas of Allegheny County, Criminal Division at No. 4672 of 1965

ORDER

Per curiam: The judgments of contempt are affirmed.
Mr. Justice MANDERINO filed a dissenting opinion.

DISSENTING OPINION

MANDERINO, J. I dissent because the defendants were entitled to a jury trial. See *United States* v. *Seale*, 461 F. 2d 345 (7th Cir. 1971); *Commonwealth* v. *Patterson*, — Pa. —, — A. 2d—(filed June 29, 1973) (Manderino, J., dissenting).

1 In the Court of Common Pleas of Allegheny County, Pennsylvania (Criminal Division)

No. 4672 of 1965 (Citation)

COMMONWEALTH OF PENNSYLVANIA

vs.

DOMINIC CODISPOTI

PITTSBURGH, PENNSYLVANIA,
Thursday, December 16, 1971.

CORAM: Hon. ROBERT VAN DER VOORT, Presiding Judge

COUNSEL PRESENT

For the Commonwealth: *Michael J. Seymour, Esq.*, Assistant District Attorney; *John G. Lehew, Esq.*, Assistant District attorney.

For the Defendant: *Dominic Codispoti; Fred E. Baxter, Jr. Esq.*, Assistant Public Defender; *George H. Ross, Esq.*, Public Defender.

TRANSCRIPT OF OFFICIAL NOTES OF TESTIMONY

Reported By: *Robert E. Kennelly*, Official Court Reporter.

2 Mr. PIPER. Gentlemen, are you ready to proceed with the case of the Commonwealth of Pennsylvania versus Dominic Codispoti, defendant, No. 4672 of 1965?

Mr. SEYMOUR. Commonwealth's ready.

Mr. BAXTER. Your Honor, the defendant wants to make several motions.

The COURT. Very well. I recognize Dominic Codispoti.

Mr. CODISPOTI. Your Honor, I was just advised that I was being tried the day before I was brought down to Western Penitentiary. Up to that time I was under the impression the Commonwealth was not going to prosecute. I wrote to Judge Fiok on two occasions and never got an answer, and the authorities up at the Huntingdon institution told me that I wasn't

going to be prosecuted. This comes as a complete surprise to me that I was going to be prosecuted on a contempt trial. I had spoken to Attorney Richard Waldon of the National Lawyers Guild several months ago, and I was advised by him that he will represent me on this contempt charge if it
3 does come to trial. I notified my sister just before I come down to send me the legal papers I had sent to her pertaining to this particular case and told her to get in contact with Richard Waldon so he will represent me in this case. Today I would like——

The COURT. Why isn't Mr. Waldon here?

Mr. CODISPOTI. I just come down. He is in Philadelphia. He is not a Pittsburgh lawyer.

The COURT. That doesn't explain why he isn't here.

Mr. CODISPOTI. Well, evidently he just got word, I imagine. He will be here.

The COURT. You have known for almost six months that these charges were pending against you. Had you alerted him?

Mr. CODISPOTI. I spoke to Mr. Waldon approximately three months ago, and at that time I told him that I was advised by the institution they probably will not prosecute, and I also wrote to Judge Fiok on two occasions and asked him is the case going to trial. He never answered me. So I wasn't
4 too sure. But I was more or less inclined to believe the State wasn't going to prosecute due to the fact I have so much time as it is.

The COURT. You never had any word from the Court that you were not going to be prosecuted.

Mr. CODISPOTI. Never had any word that I was going to be prosecuted.

The COURT. You knew that the Court was prosecuting you.

Mr. CODISPOTI. The Court didn't answer me. I wrote to Judge Fiok on two occasions. Judge Fiok never answered my letters. I spoke to Mr. Gorin from the treatment center up at Huntingdon and he advised me—he said to his knowledge I wasn't being prosecuted.

The COURT. You wouldn't expect the prison authorities to be speaking for the Court.

Mr. CODISPOTI. Well, the Courts and the prison authorities seem to work hand in hand to my experience over the years—in my particular case anyway. They seem to know where I am going. They are told where to take me, how to take me,

5 and being I am a prisoner under their jurisdiction they have a hand in everything that's happening.

The COURT. The Court has provided you with counsel.

Mr. CODISPOTI. I have my own attorney, Your Honor. And furthermore I have several petitions that I would like to submit.

The COURT. I recognize you for that purpose.

Mr. CODISPOTI. Give one to the District Attorney?

The COURT. Yes. You want to say something with regard to these motions, Mr. Codispoti?

Mr. CODISPOTI. Yes, Your Honor. When I do come to trial on this particular case I would like to have these witnesses subpoenaed in my behalf to prove my innocence of these charges. And I do also respectfully demand I be given a preliminary hearing, and that the grand jury decide whether or not to face indictment. I have never been indicted on these contempt charges, never been given a preliminary hearing or arraignment.

The COURT. You are speaking now as to the motion
6 to proceed by Complaint, is that right?

Mr. CODISPOTI. Yes, Your Honor.

The COURT. I'm not going to grant this motion for the reason that I don't believe this is the kind of accusation that is prosecuted by a Complaint. It is prosecuted by Citation which has been issued and a copy of which has been sent to you. Do you wish to speak as to any of the other motions?

Mr. CODISPOTI. My understanding that Your Honor was in doubt as to whether or not he was going to allow us defendants on this case to be tried by a jury. So therefore I drafted this particular petition up.

The COURT. Who said that the Court was in doubt about it?

Mr. CODISPOTI. I was speaking to Mr. Mayberry yesterday when he came back and he told me there seemed to be some kind of disagreement as to whether or not the presiding Judge was going to allow us to be tried by jury.

The COURT. Did he not tell you that I refused his mo-
7 tion for a jury trial?

Mr. CODISPOTI. He said he wasn't too sure. He said he was called back while on his way to the penitentiary, and he wasn't too sure as to whether or not you were going to grant it.

The COURT. I don't have his motion before me, but it appears, first blush at least, to be the same as yours.

Mr. CODISPOTI. Basically it is.

The COURT. I regard this issue, Mr. Codispoti, as an issue between the Court, not any particular Judge, but between the Court and you, and I think that the record should speak for the Court, and you can speak for yourself, and I'm going to refuse the motion for a jury trial.

Mr. CODISPOTI. Then, Your Honor, I would like to have the record show that under various laws of the United States Supreme Court that I feel that I am entitled to be tried by a jury, and these particular citations are as follows: "Baldwin versus New York, 90 Supreme Court 1886 at 1970; also Bloom versus Illinois, 391 United States Supreme Court 194, 1968; and Duncan versus Louisiana 391 U.S. 145, 1968, and all three of these cases the United States Supreme Court stated that an accused is entitled to a jury trial on a contempt charge if
8 the sentence will exeeed six months. Now, in my last— in the contempt charges that I faced before Judge Fiok I was given a total of fourteen years. Now, I can't for the life of me see how this can be considered a light charge when I was given fourteen years that I should not be tried by a jury.

The COURT. You will notice that the United States Supreme Court cases dealing with your cases—and I'm talking about Mr. Mayberry——

Mr. CODISPOTI. I didn't get that?

The COURT. I said that you will note that the United States Supreme Court case dealing with this issue involving you and Mr. Mayberry, and Mr. Langnes, said nothing about a jury trial in reversing the conviction of contempt. You recall that, do you not?

Mr. CODISPOTI. Although it states in Purdon's Statutes, Section 2041 and 2042, 17, that I am entitled to a jury trial.

The COURT. I shouldn't say that the case says nothing about it. The dissenting Judge said that there should have been a jury trial. The majority of the Court did not require a
9 jury trial in these cases dealing with you and your colleagues.

Mr. CODISPOTI. Your Honor, another point I would like to bring out. In Duncan versus Illinois it stated, and I quote:

"We hold that the Sixth Amendment as applied to the States to the Fourteenth Amendment requires that a defendant accused of serious crime be afforded the right to trial by jury." That's Duncan versus Louisiana, 391 U.S. 145, 88 Supreme Court 144, and that this was written in Baldwin versus State of New York, argued December 9th, 1969, decided June 22, 1970 by the United States Supreme Court. This states right here that I am entitled to a jury trial so long as the charge is serious, and certainly seven contempt charges where I was given one to two years on each one for a total of fourteen years can't be considered anything but serious.

The COURT. I differ with your interpretation of what those cases hold. I am refusing a jury trial. You have a motion here subpoenaing certain witnesses.

Mr. CODISPOTI. I do.

10 The COURT. Do you wish to speak to that?

Mr. CODISPOTI. Yes. These witnesses can prove—are you requiring that I make a show of proof what these witnesses are going to testify to?

The COURT. I would like to know what you propose to prove by them, yes.

Mr. CODISPOTI. I propose to prove my actions were provoked by the actions of Judge Fiok, and therefore was more as an answer rather than contemptuous actions and display of contempt, and also my actions did not disrupt the procedure of the trial. Those two things I intend to prove by these witnesses. I don't think it would be appropriate to reveal my entire case.

The COURT. What better time is there? I am giving you an opportunity.

Mr. CODISPOTI. Is the District Attorney going to reveal his entire case?

The COURT. Yes. He will make an opening statement what he intends to prove.

11 Mr. CODISPOTI. Are you going to reveal to me right now what his witnesses are going to prove?

The COURT. He will make an opening statement concerning what he intends to prove.

Mr. CODISPOTI. I am intending to prove my actions did not obstruct the administration of justice, that it was merely a—sort of an argument between—a legal argument between me and Judge Fiok. It did not obstruct the proceedings, and it was not contemptuous.

The COURT. That's the whole basic issue, isn't it?

Mr. CODISPOTI. Yes. My witnesses will help me establish this proof.

The COURT. What will they say?

Mr. CODISPOTI. Your honor, I don't think that I should go into the exact details, wording as to what they are going to say.

The COURT. I am giving you an opportunity to tell me what you expect to prove by them.

12 Mr. CODISPOTI. I intend to prove that my actions did not disrupt the proceedings, and I intend to prove that my actions was not contemptuous, that it was merely an answer to the provocation made by the presiding Judge.

The COURT. I am going to refuse your motion to subpoena witnesses for the reasons I have told you. I think this is an issue between the Court and you, and the record will speak for the Court, and you and counsel can speak for yourself.

Mr. CODISPOTI. There is one thing I want to make clear. I came in this courtroom trying to be respectful. Right?

The COURT. You have been.

Mr. CODISPOTI. You know I got ninety years. Right? In fact this is immaterial——

The COURT. Excuse me. I do not know that you have ninety years.

Mr. CODISPOTI. I got fifty years right on that one charge.

The COURT. No, I don't. Now that you tell me I know.

13 Mr. CODISPOTI. I did not come to this courtroom trying to create a scene or a circus atmosphere. As long as you afford me the right under due process of law I will conduct myself as a gentleman. But if I think you are going to railroad me, mother fucker, you can get that straight jacket again. You understand? Now, you can just run me out of this courtroom, get your blackjack, get your straight jacket, but I don't give a fuck. I am doing ninety years. Now, if you want to make a circus out of this, Chicago Eight, go ahead baby, but if you want to go by the law I will go by law. Make it easy on yourself because I don't give a fuck one way or the other. Now, you do what you want to do.

The COURT. Can't you clean up your language a little bit?

Mr. CODISPOTI. No, if you think you are going to step on me you got another fucking thought coming. You can go get that fucking straight jacket right now.

The COURT. If you continue this kind of conduct it will be necessary to remove you from the courtroom.

Mr. CODISPOTI. I don't give a God damn what you do. If you think you are going to railroad me you might as
14 well and try me in absentia.

The COURT. Can you not remain civil and clean up your language a little?

Mr. CODISPOTI. Listen, you clean up your God damn integrity. You're supposed to be a Judge. You're supposed to give me a fair God damn trial not because I'm a convict that ain't got any money. If I was Rockefeller's son you wouldn't talk like that denying this, denying my witnesses, and everything. Who the hell are you trying to get? You are the stupidest God damn Judge on the Bench, from what I hear.

The COURT. Sheriff, kindly remove this gentleman from the room. Mr. Goga, take him into the room here and keep a guard. Prop that door open. Mr. Seymour, are you ready to proceed?

Mr. SEYMOUR. Yes, Your Honor. I believe the defendant made mention of an attorney in Philadelphia. In connection with that I don't believe there has been a ruling.

Mr. BAXTER. If it Please the Court, Your Honor——
15 The COURT. I would like you to keep your language addressed into the microphone.

Mr. BAXTER. If it Please the Courts Your Honor, Mr. Codispoti made a request to the Court for counsel from Philadelphia. Yesterday Your Honor made that same provision for Mr. Mayberry to give him the opportunity to acquire that counsel. I would ask you to do the same thing for Mr. Codispoti.

The COURT. That request is refused. EXCEPTION NOTED.

Mr. BAXTER. In light of that fact, Your Honor, I am not prepared to proceed in this matter.

The COURT. I unfortunately have to direct you to proceed. You will represent this man to the best of your ability.

Mr. BAXTER. I will do so under protest.

The COURT. Very well.

Mr. BAXTER. Do I understand Your Honor to say also that I am not permitted to call any witnesses in his behalf?

The COURT. That is correct. This is an issue between
16 the Court and Mr. Codispoti, and you and Mr. Codispoti will speak for him, and the record will speak for the Court.

17 * * * * *

18 * * * * *

Mr. BAXTER. In any event I think that's a factual consideration Your Honor is going to have to make, and without the necessary witnesses——

The COURT. It isn't your custom to use four letter words when you are addressing the Court. I hope that condition never comes about. Under your theory it would.

Mr. BAXTER. That's the law, as I understand it, Your Honor. I think we have to show something more than just the record in this case.

The COURT. I would like to know whom you propose to call and what they will say. I want to know what facts they will tell the Court.

Mr. BAXTER. It is difficult for me to say that to Your Honor because I only talked to Mr. Codispoti an hour ago. He was in the far reaches of Pennsylvania and not brought into Allegheny County until yesterday evening, and not brought down to the jail here until before the trial.

The COURT. How long ago were you appointed counsel in this case?

19 Mr. BAXTER. Eight days ago.

The COURT. Very well. We will proceed.

Mr. SEYMOUR. I call my first witness Mr. John Goodworth.

John H. Goodworth, a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seymour:

Q. State your name?

A. John H. Goodworth.

Q. Occupation?

A. Court Reporter.

Q. Present address?

A. United States Courts, United States Post Office Building, Court House, Pittsburgh, Pennsylvania.

Q. That's where you are presently employed, is that correct?

A. Yes, I am.

Q. For what period of time have you been employed in that capacity?

A. United States Courts for approximately two and a half years.

Q. And your duties at the United States Court, tell us?

A. To report testimony verbatim by machine shorthand.

20 Q. Prior to being so employed by the United States where were you so employed?

A. By Allegheny County as a Court Reporter.

Q. For what period of time did you hold that position?

A. Approximately nine years as an official.

Q. During that period of time you were engaged full time in that capacity?

A. I was.

Q. Were you so engaged on November 7th, 1966?

A. Yes.

Q. Do you recall the courtroom to which you were assigned at that time?

A. Court Room Number 7.

Q. What Judge was presiding?

A. Judge Fiok.

Q. Do you recall the nature of the trial, and the defendants involved in the case?

A. Yes, I do.

Q. Tell us who the trial Judge was, who the defendants were, and the nature of the trial?

A. The defendants were Mr. Mayberry, Mr. Codispoti, and Mr. Langnes on charges of attempted prison breach, and holding hostages in a penal institution.

Q. Did you record the testimony which was taken during the course of that trial?

A. I took stenographic notes of the testimony presented at that trial, yes, sir.

21 Q. Was the testimony from that trial transcribed?

A. Yes, it was.

Q. Following its transcription what if anything did you do with the testimony?

A. The original of the transcript was filed with the Clerk of Courts for Allegheny County, a copy was sent to each defendant at that time located in Western Penitentiary.

Q. Prior to the filing of the transcript itself did you do anything with the transcript?

A. In filing the original I would sign a certificate certifying it as being a true and correct transcript of the stenographic notes taken at the trial.

Q. Do you recall how many volumes——

Mr. CODISPOTI. Aw shut up! Fuck you, you cocksucker!

The COURT. Close the door.

A. I divided the volumes into eight for the convenience that out of some three thousand two hundred pages of testimony and colloquy reported in that trial that it would be convenient for counsel and others to have separate volumes in reading the transcript.

Mr. SEYMOUR. I would ask the Court's permission to request Mr. Yankin from the Clerk of Courts to produce
22 the transcript we were referring to.

The COURT. Very well.

Mr. SEYMOUR. Mr. Yankin. May I have him place them in front of the witness?

The COURT. Yes.

Q. Mr. Goodworth, I would ask that you take a look at what is placed in front of you and tell us what it is?

A. These are the volumes of original transcript filed with the Clerk of Courts office in this trial of the Commonwealth of Pennsylvania versus Langnes, Mayberry, Codispoti at No. 4672 of 1965.

Q. How many volumes does it consists of?

A. There are eight there, eight volumes.

Q. Please break the bind on them and see if your signature appears at the end of them?

A. There is a Court Reporter's certificate following Page 3239 that says, "I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me at the trial of the within cause, and that this copy is a true and correct transcript of the same." My signature "John H. Goodworth, Official Court Reporter."

Q. And these are the same eight volumes you presented to the Clerk of Courts for filing?

23 A. These are the same eight volumes.

Mr. BAXTER. No cross-examination.

Mr. SEYMOUR. No further questions of this witness at this time, Your Honor.

The COURT. Very well.

Mr. SEYMOUR. I would like to call as our next witness Mr. Yankin, from the Clerk of Courts.

Mr. BAXTER. If it Please the Court, Your Honor, I would like for an offer of proof so far as the transcript is concerned, and the purpose for it.

The COURT. Yes. Will you outline what you propose to prove in this case?

Mr. SEYMOUR. Yes, Your Honor. Following the testimony of Mr. Yankin who I intend to use in order to show that he has had custody of these records during the period of time since they were placed with him by Mr. Goodworth, after he testifies in connection with same I would ask the Court in an offer to accept these volumes into evidence following which I
24 would like to read various statements for which Mr. Codispoti has been cited for contempt into the record.

Mr. BAXTER. Object to the testimony then of Mr. Goodworth, Your Honor, and move it be stricken on the basis it is irrelevant.

The COURT. Motion is refused. EXCEPTION NOTED.

Mr. SEYMOUR. May I proceed with Mr. Yankin?

The COURT. Yes.

Thomas Yankin, a witness called on behalf of the Commonwealth, having been duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Seymour:

Q. Please state your name?

A. Thomas Yankin, Clerk of Courts.

Q. In that capacity would you tell us what your various duties are?

A. Well, in that capacity I keep charge of the records and make record searches, and answer telephone calls regarding these various record searches.

25 Q. By taking charge of the records you mean that you have them in your custody?

A. That is true.

Q. For what period of time have you been employed by the Clerk of Courts in that capacity?

A. Seventeen years.

Q. The transcript which you brought forward at my request would you tell us where you secured them?

A. They were filed by Mr. Goodworth.

Q. And they have remained in your possession until you presented them to this Court today?

A. They have.

Q. During that period of time no one has had access to them, is that correct?

A. That is true.

Q. And they are in the same condition today as they were in at the time you received them?

A. That is true.

Mr. SEYMOUR. No other questions.

Mr. BAXTER. No cross-examination.

Mr. SEYMOUR. With that testimony, Your Honor, I would like to offer in evidence the eight volumes of testimony which was taken by Mr. Goodworth and transferred to the
26 Clerk of Courts in connection with the trial in which Mr. Codispoti was cited for contempt of Court on seven charges.

The COURT. Any objection?

Mr. BAXTER. I have no objection to the entrance of those transcripts to show the testimony was taken, but for any other probative value of them, Your Honor, I would object in that they are irrelevant. I would object in that there is no way that I would be able to cross-examine that particular transcript to determine what was said, the atmosphere in which it was said, and for the purpose which it was said, and therefore for any other purpose I will object to that entrance of the testimony.

The COURT. Are you claiming that it doesn't accurately represent what was actually said?

Mr. BAXTER. Not at all, Your Honor. There is no way I can cross-examine the transcript of the testimony.

The COURT. Of course not. How could anybody cross-examine a transcript?

Mr. BAXTER. That's exactly my point, Your Honor.
27 There is no way I can challenge or determine the atmosphere out of which those particular statements were made. I think the only way that can be done is by calling actual eyewitnesses to those events at the time, as Mr. Codispoti had requested of Your Honor earlier.

Mr. SEYMOUR. That may be true, Your Honor, but these are official Court records, and I believe they have always been accepted into evidence in any Court.

The COURT. There is no question about it.

Mr. BAXTER. I'm not objecting to the entrance of those records, Your Honor, but I am objecting to the entrance of those records for the use for which the District Attorney proposes to use them, and that is to prove his entire case, as I understand.

The COURT. Objection overruled, and permit the introduction into evidence of the records in this case to indicate what was said and done in so far as language can do so. EXCEPTION NOTED.

Mr. SEYMOUR. As a substitute for my reading the various statements into the record by reading the transcript I would ask the Court to permit Mr. Goodworth, the Court
28 Reporter, to do so. I would direct him to the area and ask him to read from his own record.

The COURT. Very well.

Mr. SEYMOUR. Mr. Goodworth.

Mr. Goodworth, resumes the stand.

Mr. BAXTER. Your Honor, so as not to interrupt Mr. Seymour again I will object to each and every statement he elicits from the transcript as far as its probative value is concerned as introduced into evidence, and I would like Your Honor to note an objection on the record to each and every statement that he is going to read from the record.

The COURT. It will be so noted, and the objection is overruled at the present state of the record. EXCEPTION NOTED.

Mr. BAXTER. All right, Your Honor.

DIRECT EXAMINATION

29 By Mr. Seymour:

Q. Mr. Goodworth, I ask you to turn to Volume 3, Page 1259 in the record?

A. I have Volume 3, Page 1259.

Q. Ask that you read the first complete sentence by the Court and then the reply made by Mr. Codispoti?

A. "The COURT. You will ask it and I will rule on it.

"Mr. CODISPOTI. Are you trying to protect the prison authorities, Your Honor? Is that your reason?"

Q. I would ask you turn to Volume 4, Page 1842?

A. Volume 4—what page?

Q. 1842. I believe the beginning of 1842 is an incomplete sentence, and it is completed on Page 1841, if you will read from the bottom of that page?

A. You mean read from the bottom of Page 1841?

Q. Yes?

A. The colloquy by Mr. Codispoti: "I want this placed on the record, and I want the jury in this case to realize that if there are any outbursts by the defendant it is only because the defendants in this case will not sit still and be kowtowed and be railroaded into a life imprisonment."

Q. Ask you turn to Volume 5, Page 2026—Page 2022. Excuse me—make it 2023 and read the colloquy between the Court and the defendant?

A. Page 2023?

Q. Yes?

A. "The COURT. We will sustain an objection to what he said.

"Mr. CODISPOTI. No objection never been raised.

"The COURT. We will not permit the witness to testify to obvious hearsay.

"Mr. CODISPOTI. Have it your way, Caesar.

"The COURT. I have warned you several times, Mr. Codispoti.

"Mr. CODISPOTI. You are trying to railroad us.

"The COURT. I warn you again.

"Mr. CODISPOTI. You are trying to railroad us to life and don't even want us to conduct a legal defense.

"The COURT. You don't know anything about legal defense. You think you do.

"Mr. CODISPOTI. You don't have to be a lawyer or a professor to defend himself." Continuing on Page 2024: "I defended myself before in New York and down in Montgomery County, and I have never come across such a tyrannical display of corruption in my life."

Q. Please direct your attention to Volume 6, Page 2286?

A. Page 2286?

Q. Yes, that is correct. Would you begin to read from that page about halfway down?

A. "The COURT. Very well. You may proceed, Mr. Mayberry, since you want to ask questions of this witness.

"Mr. LANGNES. I'm not done examining the witness, Your Honor.

"The COURT. I will give you two minutes to ask your next question.

"Mr. CODISPOTI. Are you going to tell me my co-defendant is not crazy? You must be crazy to try me with him. How
31 can you guarantee me a fair trial with a nut? The man is obviously sick. Anybody can see that."

Q. Please turn to Page 2424, same volume. Would you please begin to read from the first complete sentence on that page?

A. "The COURT. Anything else?

"Mr. CODISPOTI. If I recall correctly, Your Honor, you said that you hoped I can prove my allegation that there is a conspiracy between this Court and the prison officials, and I don't see no reason why you should deny me that right now.

"The COURT. Because you can't do it.

"Mr. CODISPOTI. How do you know? You don't know.

"The COURT. We are not going to waste time, Mr. Codispoti, that is one thing certain. Now, we will permit you to go ahead and examine this witness, and I will spell it out for you based on what you have told this Court as to what you can do, the area of interrogation that you can have with this witness. You can interrogate this witness relative to the exhibits as to whether or not he saw them in your possession——" there are two dashlines indicating an interruption.

Q. Thank you, Mr. Goodworth. You have indicated what I want you to. Turn to Volume 8 and begin reading from Page 3042. Would you begin reading from that page in connection with the conversation between the Court and Mr. Codispoti?

A. "The COURT. Mr. Codispoti—let the record show that I am giving you full opportunity to continue with your defense.

"Mr. CODISPOTI. I am not prepared to defend my-
32 self——" two dash lines to indicate an interruption.

"The COURT. Hear me out, Mr. Codispoti, hear me out. I am giving you the opportunity of presenting any defense that you have. If you do not go ahead with your defense the Court can only conclude that you have no further defense and the case will be closed for the defense. I want you to understand that, Mr. Codispoti.

"Mr. CODISPOTI. I understand that fully.

"The COURT. All right.

"Mr. CODISPOTI. And I understand I have a right to defend myself in a proper manner,——"

Q. Continue reading to the next page?

A. "Mr. CODISPOTI (continuing). And that this right is being denied me merely because I am a convict and because I have a prison record and because of the prejudicial articles that have been committed to the newspapers. Now, I have asked several times that the jury be polled in regards to these prejudicial articles that have been placed in the newspaper, and I would like to know why Your Honor will not poll the jury. If you feel that the jury is not prejudiced toward the defendants then poll them and find out."

Q. Continue, please?

A. "The COURT. You are out of order.

"Mr. CODISPOTI. I will be out of order as long as you refuse to grant me a fair trial. You are not going to railroad me into a life bit.

"The COURT. Are you through?

"Mr. CODISPOTI. I am not through until you concede I am right."

Q. Continue reading, please?

33 A. "The COURT. All right, sir. If you do not——I will give you five minutes to cool off and give you an opportunity to continue with your defense. If you do not we will close the case. And we will consider as a matter of record that you have been requested several times to proceed with your defense. You do not wish to go ahead with your defense.

"Mr. CODISPOTI. No, I didn't say that.

"The COURT. We will terminate this case.

"Mr. CODISPOTI. I did not state that.

"The COURT. We will take a five minute recess at this time."

Q. Would you please turn to Volume 8, Page 3090. Before beginning to read from Page 3090 would you tell us from looking at the record in what part of the trial this page is included with?

A. These were remarks that preceded the Charge of the Court or the attempt of the Court to charge the jury.

Q. Begin reading from Page 3090 that part of the transcript referring to Mr. Codispoti's declarations?

A. "The COURT. Guards, remove the defendant." At that time the Court was referring to Mr. Mayberry. "We will take a short recess, and bring this defendant back in such a situation so that he can no longer interrupt the proceedings.

Mr. CODISPOTI. You had better set the motion for defendant Codispoti if you intend to gag defendant Richard Mayberry.

The COURT. Take Mr. Codispoti as well.

"Mr. CODISPOTI. You are not going to gag him and make me stay quiet."

34 Q. Would you continue reading from the record those parts of conversation relating to Mr. Codispoti?

A. "The COURT. We are not going to put up with any monkeyshines any longer.

"Mr. CODISPOTI. You have been making them for five weeks.

"The COURT. We will take a short recess, members of the jury."

Q. Now, you turn to the next page and see if there is any further declarations made by Mr. Codispoti?

A. There's nothing on Page 3092, but on Page 3093 remarks of Mr. Codispoti which were reported through the gag that was placed on Mr. Codispoti.

Q. Would you indicate what he said?

A. "You can try knocking me in the head with a sledge hammer. Maybe that will keep me quiet. Maybe that would be befitting with the proceedings going on."

Q. Is there anything further on that page?

A. "The COURT. I must charge the jury." An indication: "Thereupon Mr. Codispoti, Mr. Mayberry, and Mr. Langnes were removed from the courtroom at 10:15 A.M.," and a recess was had.

Q. Mr. Goodworth, in each case, in each instance that you refer to pages which I have asked you to refer to can you tell us whether or not they represent the exact language that you heard at the time of the trial?

A. They do.

35 Mr. SEYMOUR. No other questions.

CROSS-EXAMINATION

Mr. Ross. If the Court, Please, I am Mr. Ross. Do I have permission of the Court as associate counsel to ask questions?

The COURT. Yes.

By Mr. Ross:

Q. John, let me ask you this: This trial took place in 1966, is that correct?

A. That is correct.

Q. And what you have read here I assume you have no independent recollection of those words being said at the particular time that they were supposedly to be said?

A. No, only referring to the transcript.

Q. How do you transcribe your record, do you transcribe it onto a duplicating machines and then have somebody else type it or do you do your own—did you in this case?

A. In this instance and in most every instance because of the volume of work the stenographic notes are dictated either into a Stenorette machine or Dictaphone, and those tapes turned over to a typist, the typist transcribes them onto
36 paper, returned to the Court Reporter, to myself, check read, and then bound.

Q. When you mean "check read" John, do you read every single page that is returned to you after it has been transcribed by the typist?

A. Yes, sir.

Q. Do you check that page against your stenographic notes page by page or just generally as to recollection?

A. Generally as to recollection.

Q. Then I assume then that you do not go page by page and check every single page with every stenographic note?

A. That is correct.

Q. After that is done what next is done with these notes that you have transcribed and spot checked by you?

A. The original is filed in the Clerk of Courts office.

Q. When was this original of this record from which you have been referring filed in the Clerk of Courts office?

A. I have a notation here stamped by the Clerk of Courts office "Filed, Clerk of Courts, March 17, 1967."

Q. That was a period of four or five months after the actual happenings in the courtroom, supposedly?

A. That is correct.

Q. When next did you see the record, John, or have occasion to refer to it?

A. Yesterday is when I saw these volumes. Today is the first time that I have referred to them since then.

37 Q. I assume then from the time you filed them in April, 1967 up until yesterday you had no occasion to see that record, to refer to it or to look at it?

A. That is correct.

Q. Have you since you looked at it checked that record with the original notes of your testimony to determine whether or not these actually reflect the notes which you took of the trial?

A. No, I have not.

Q. Do your notes of the trial contained in that record as you have read to us show any inflection of voice, any position of the parties, any raising of the voice between any of the parties, or just barely the words that were spoken but under no circumstances how they were spoken?

A. That is correct, no emphasis supplied.

By Mr. Baxter:

Q. Would the same thing be true as far as facial expressions and gestures are concerned?

A. Yes. The Court Reporter would make no interpretation of anything.

REDIRECT EXAMINATION

By Mr. Seymour:

Q. Mr. Goodworth, are the notes which you took
38 available at the present time?

A. Oh, yes, they are.

Q. Where are they available?

A. They are lodged on the sixth floor of this Court House with other Court records, Court notes.

Q. And how do you know these notes are there?

A. I know that they were placed in that position back in 1967.

Q. By you?

A. By myself, yes.

Q. I believe the question was asked by Mr. Ross whether or not you had any recollection of the statements made by Mr. Codispoti?

A. Independent recollection.

Q. Independent recollection. Isn't it true, Mr. Goodworth, that you have remembered in fact some of the discussions that went on between the Court and the defendant—

Mr. Ross. Objected to.

Q. Outside of the record?

A. Yes, I have.

Q. So you do have some recollection independent of the record, is that correct?

A. This was a landmark trial in the United States, as I understand it, preceding anything that occurred in Chicago,
in the Chicago Seven trial. This case was marked with
39 fighting words, awkward scenes in a courtroom. Therefore there would be things I would remember because I

have never before reported a case where defendants were finally placed in straight jackets and gagged.

Q. And do the statements which you read to the Court today from the transcript correspond with that part of your independent recollection that you have?

Mr. Ross. If the Court, Please, that is objected to.

The COURT. Objection overruled. EXCEPTION NOTED.

A. Answer is yes.

Q. Mr. Goodworth, when the notes are placed in transcript form you indicated that you spot check the transcript, is that correct?

A. That is correct. It was interpreted as a spot check because I did not take my notes and compare them directly with the typed transcript but rather that I had just read the pages, and it would appear without explanation that these eight volumes were presented to me at one time for review, for check reading. This was not the case because as the belts or tapes were dictated and the transcript typed they were returned to me as the typist got it done so that this would be fresh in my mind as
40 opposed to a five month span, at least, which might be reflected by the dates.

Q. In the event that something that you read in the transcript does not conform with your memory, what do you do?

A. This is checked out with the notes themselves because the typist can mishear what is being dictated, and I am responsible for an accurate transcript whether she types it or not. It is my signature on the volumes, totally my responsibility.

Q. And it is the custom and practice in your profession before you sign the certification which you referred to earlier in your testimony what must you be convinced of and what conclusion must you have reached personally?

A. This is a true and accurate transcript of the stenographic notes taken in the case.

Mr. SEYMOUR. No other questions.

RECROSS-EXAMINATION

By Mr. Ross:

Q. John, are you stating to this Court that you have an independent recollection in a five week trial involving at least three defendants what each of these defendants said on a particular day that could be classified as derogatory to
41 the Court?

A. No, I am not saying that.

Q. Have you read the Citation that has been issued by the Commonwealth of Pennsylvania against Dominic Codispoti?

A. No. I have not.

Q. Then you don't know what is contained in the Citation, do you?

A. No, I don't.

Q. Then I gather from your questioning by the District Attorney that you have no recollection of any particular words being said by any particular defendant on any particular day, do you, independent of this record?

A. Of any defendant in this case?

Q. All right, Dominic Codispoti. Let's make it simple for you, John.

A. I have an independent recollection, sir, of the remarks made through the gag by Mr. Codispoti. The record does not reflect a wink of the eye by Mr. Codispoti to myself indicating that something was going to occur because I looked at Mr. Codispoti that morning—that afternoon, and in this straight jacket and in the gag and he said that if he were to be kept quiet he would have to be hit on the head with a sledge hammer. That would be an instance.

Q. I have examined the seven counts in which this defendant is charged with a Citation, that doesn't appear in any of the seven, are you familiar with that?

42 A. No, because I haven't looked at any of those Citations or any legal papers involved.

Q. So the truth of the fact is, John, after this record went out of your hands you have done nothing with it or examined it until you were called here to be a witness and you were cited certain pages by the District Attorney as to what occurred?

A. At this moment, and not prior.

Mr. BAXTER. No other questions.

By the COURT:

Q. If you are instructed by the Court to note any unusual happenings in the courtroom on the record do you or do you not do so?

A. I do so, Sir.

The COURT. Very well. That's all I have.

By Mr. Ross:

Q. Did you do that in this case? Did the Court, Judge Fiok,

call your attention to any particular happening and ask you to make such a note in the record of that happening?

A. No, he did not. May I ask a question of Mr. Ross for clarification?

43 Mr. Ross. No. You know, John, we don't have to be asked questions.

Mr. Goodworth. I understand.

Mr. Seymour. I have no further questions of the witness, Your Honor. I would like to indicate that since the records themselves are in evidence that the dates on which each of these statements were made are indicated in those records although they were not referred to specifically by Mr. Goodworth.

The Court. Very well.

By the Court:

Q. Mr. Goodworth, one thing, I may have overlooked it, how long have you been reporting as a Court Reporter?

A. Appointed Official Court Reporter in 1962, Your Honor, March.

Q. A little better than nine years then, is that correct?

A. Yes.

The Court. Very well.

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44–49 * * * * *

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The Court. I had asked counsel during recess to find out from the defendant whether or not be wished to testify. I have been advised that he desires to testify. It is now a little after four o'clock, and I think we will not start his testi-

51 mony until the morning.

Mr. Baxter. Has the Commonwealth rested, Your Honor?

The Court. I don't know the answer to that.

Mr. Lehew. I think we could safely assume that the Commonwealth qualifiedly rests at this point with the request that the Court grant the Commonwealth the right to reopen this case tomorrow if it deems necessary.

Mr. Baxter. I would object to that, Your Honor. Either they are going to rest or they are not going to rest. If they want to reopen their case they can make the proper motion.

The COURT. Well, no rush. They can rest the first thing in the morning, if they so see fit.

Mr. LEHEW. I have a particular reason for that which I don't desire at this time to make public.

Mr. BAXTER. Then I understand that they have not rested?

52 The COURT. That is correct.

Mr. SEYMOUR. That is correct.

Court adjourned until Friday, December 17, 1971 at 9:30 A.M. E.S.T.

53 Friday, December 17, 1971

The COURT. Gentlemen, are you ready?

Mr. SEYMOUR. Yesterday we were at that point where I introduced into evidence the contempt Citation signed by Judge Fiok, and it is a matter of evidence now, and I believe with that the Commonwealth concludes our case against Mr. Codispoti.

The COURT. Very well.

Mr. BAXTER. It it Please the Court, Your Honor, my understanding is that the contempt Citation was entered into evidence solely for the purpose of showing the Citation was filed in this case and for no other purpose. Am I correct in that assumption, Your Honor?

The COURT. I think it was introduced to show what the charges were against the defendant, and who had made them.

Mr. BAXTER. Specific citations that are set forth in

54 that petition are in no way to be considered evidence, that's my understanding. Is that correct, Your Honor?

The COURT. Of course.

Mr. BAXTER. The Commonwealth has rested?

The COURT. Would you read, Mr. Kennelly, what the Commonwealth said.

[The following was read by the Reporter: Yesterday we were at that point where I introduced into evidence the contempt citation signed by Judge Fiok and it is a matter in evidence now, and I believe with that the Commonwealth concludes our case against Mr. Codispoti.]

Mr. BAXTER. Your Honor interpret that to be the Commonwealth has rested their case?

The COURT. I am not making any interpretation of it. I am asking you to proceed.

Mr. BAXTER. Has the Commonwealth rested their case?

55 Mr. SEYMOUR. Your Honor, I guess we are quibbling over words. The Commonwealth has rested their case.

Mr. BAXTER. That's what I am inquiring about. At this time I would demur to the charges set forth by the Commonwealth that they have not established a prima facie case of criminal direct contempt as far as the proof is concerned in this case. I point out to Your Honor there are a number of Supreme Court decisions—United States Supreme Court decisions setting forth the proposition that contempt involves something more than just an insult to the dignity of the Court. That clear and direct proof must be entered into evidence that though these things were derogatory toward the Court that they in fact obstructed justice in some manner or another. The obstruction of justice, if it is in this record at all, and considering the evidence in the light most favorable to the Commonwealth is nothing more than innuendo for Your Honor to assume that there was an obstruction of justice. The Commonwealth did not call the trial Judge in this case. The Commonwealth did not call any of the participants in this case to testify to the effect of these statements. There is no evidence at all in
56 this case as to the tone of voice used, as to the effect on the jurors, or on the trial Judge of these statements made, and I think that is insufficient proof to establish a case of direct criminal contempt. If Your Honor would give me two or three days I could present a brief I think supporting that position. The record in this case is void of the proof that is necessary and essential to show there was in fact an obstruction of justice.

The COURT. Demurrer is overruled. EXCEPTION NOTED.

Mr. BAXTER. I call upon Dominic Codispoti.

[Dominic Codispoti, the Defendant, having been duly sworn, and having taken the witness stand, stated as follows:]

Mr. CODISPOTI. I just have a few words to say. It's going to be brief. Your Honor, I want you to know that up until this trial I thought that Judge Fiok was the worst mother fucker that ever walked the face of the earth. I take that back, you are. Fuck you, fuck this trial, fuck America, and fuck this system for the whore that it is. Here's what I think about
57 the trial. "Pooh."

The COURT. The District Attorney may have some questions to ask you, Mr. Codispoti.

Mr. CODISPOTI. If he wants to ask me some questions he can come down to the penitentiary to see me because I'm not going to dignify this mother fucking trial and sit here and pretend that I am being tried legally according to law. This is the first fucking kangaroo trial I ever had, and I have been tried at least twenty five times. Now, you don't do this to the Black Panthers, you don't do this to the revolutionaries, the communists, why the fuck are you doing it to me? You ain't going to have me sit here and listen to this bullshit. You can throw me the fuck out of here. That's all I got to say.

The COURT. Do you have any cross-examination, Mr. Seymour?

Mr. SEYMOUR. May I have a minute, Your Honor?

Your Honor, I don't feel there is any purpose in asking the defendant any questions.

58 The COURT. Very well.

Does that conclude the defense testimony at this time?

Mr. BAXTER. Yes, subject to Your Honor's ruling we had a number of other witnesses we wanted to call, Your Honor will not let us call them, so we have no other choice but to rest.

The COURT. That is correct. I have ruled that this is a matter between the Court and the defendant, Dominic Codispoti.

Mr. BAXTER. Again, Your Honor, I would move for a directed verdict of not guilty of criminal contempt for the reasons I have cited as far as my demurrer was concerned. The Commonwealth has plainly and simply failed to establish a prima facie case or a case in this circumstance beyond a reasonable doubt that there was in fact direct criminal contempt. I cite Your Honor again a number of United States Supreme Court cases stating you have to show something more than an affront to the dignity of the Court. There must be an affirmative showing that

59 there was in fact obstruction of justice. That is completely lacking from the Court Reporter at the trial reading statements into the record. That is not proof of obstructing justice, and therefore I would ask Your Honor to rule favorably on a directed verdict of not guilty.

The COURT. Mr. Baxter, the transcript shows words which would obstruct any trial in any courtroom, and you have had an opportunity through the defendant to offer evidence that it did not obstruct the trial.

Mr. CODISPOTI. You wouldn't give me my witnesses. How am I going to offer evidence?

The COURT. You have not taken advantage of that opportunity.

Mr. CODISPOTI. How the fuck am I going to take advantage you wouldn't give me my witnesses. Who the fuck are you trying to kid? What the fuck do I look like, some kind of dodo? You're a fucking Gestapo from the word go.

The COURT. So in the absence of any evidence opposing what the Commonwealth——

Mr. CODISPOTI. Give me my witnesses, I'll prove it.

The COURT. What the Commonwealth has presented——

Mr. CODISPOTI. I'll prove there is a conspiracy between Fiok and the prison officials. Let me have my witnesses.

The COURT. Will you please remain quiet while I am trying to speak.

Mr. CODISPOTI. I ain't going to remain quiet. You know what you can do. Do what Fiok did. Do what the fuck you want to do. Give me my witnesses. You must be out of your fucking mind.

The COURT. The ruling has already been made on the motion for demurrer. The same problem is presented here except that there was opportunity to present evidence, but none has been presented.

Mr. BAXTER. I would like very much to present evidence, but I am restricted only to call the defendant to testify.

The COURT. That's what I am saying, the defendant has made no statement that the trial was not disrupted or anything of that nature. The motion for a directed verdict will be refused. Is there any rebuttal before we close this matter up?

Mr. LEHEW. If the Court, Please, we were given to understand yesterday afternoon at the close of the session that the defendant was going to take the stand and testify in his own behalf to the effect that some activities alleged to have occurred in the courtroom by His Honor and by the Assistant District Attorney who happened to be trying the case provoked the defendants—the various defendants into saying or adopting the tactics which they did. Now, what has transpired here this morning has rather taken us aback. There is nothing this defendant has said here except criticized the whole proceedings——

Mr. CODISPOTI. And I'll keep criticizing it.

Mr. LEHEW. I will ask Mr. Baxter if he has read the Opinion in the Mayberry case in which the Court in effect

said the language that was used in that particular case——

Mr. BAXTER. May it Please the Court, Your Honor——

Mr. LEHEW. Constituted a criminal contempt, and the only issue at that time was the fact the Judge did not at that time adjudge him in contempt or cite him in contempt at that particular time and sentence him rather preferring to wait until the conclusion of the case and then imposing sentence and adjudicating him in contempt, and that's the only reason this case is referred back. They have already decided in effect that constituted the contempt, the use of the words in the courtroom showing the utter disregard for the Court that had been shown according to the record.

Mr. CODISPOTI. Listen, you'se don't know but this mother fucking court is ready to be bombed. At eleven o'clock there is a fucking bomb placed here, and I had it placed in this courtroom, and at eleven o'clock this mother fucking bomb is going off.

Mr. LEHEW. Do you realize, Mr. Codispoti——

63 Mr. CODISPOTI. Do you realize that at eleven o'clock a fucking bomb is going off in this fucking courtroom? Do you realize that?

The COURT. At least we'll all go together, Mr. Codispoti.

Mr. CODISPOTI. You realize there is a fucking bomb planted in this courtroom to go off at eleven o'clock? How about that? Do you know that?

Mr. LEHEW. Do you realize the verbage in the conversation that you are using and the language——

The COURT. I don't want any——

Mr. CODISPOTI. I don't give a fuck about this court. I got more respect for a mother fucking dungeon than I do this court. This is a fucking Gestapo fucking court. There ain't a mother fucking court in Russia that would deny a man a jury or deny his fucking witnesses. Who the fuck are you kidding? You know God damn well right they ain't going to find me guilty.

What are you going through all the fucking motions for?

64 To make it look good on the record? I'm no fucking dodo.

The COURT. Do you have something to say, Mr. Baxter?

Mr. BAXTER. Yes, Your Honor. I am really not sure what Mr. Lehew was responding to when he made his argument. I think Your Honor asked him whether or not he had any

rebuttal testimony. I will say and represent to the Court that that is not true where Mr. Lehew says that a representation was made to him and that Mr. Codispoti was going to take the stand and testify as to the merits of this case. I made no such representation to him. I don't think my colleague George Ross made that representation to him. That may have been an assumption on his part, but we certainly never said that to him.

The COURT. Is there any rebuttal, gentlemen, from the Commonwealth?

Mr. CODISPOTI. You got fifteen minutes. You got fifteen minutes.

Mr. LEHEW. I believe not, Your Honor. O—I beg your pardon—that's all, Your Honor.

65 The COURT. Very well, that closes the testimony gentlemen.

Mr. BAXTER. Nothing further to offer, Your Honor, except I'll renew the argument at this time and ask you to find Mr. Codispoti not guilty based on the fact the Commonwealth has simply not proven their case of direct criminal contempt. I think there is a long line of United States Supreme Court decisions setting forth what they must do, and they haven't done it. I think also, Your Honor, I would ask you to invoke at this time the fact that there are a number of witnesses the Commonwealth could have called, the District Attorney in the case, the trial Judge in the case, the jurors in the case they did not call, and I would ask Your Honor to consider just as you would charge a jury that the reason these available witnesses were not called is because their testimony would be adverse to the interests of the Commonwealth. They were available and not called, and I think that presumption should at least arise that the reason they were not called is that their testimony would be adverse to the Commonwealth's position.

66 Mr. CODISPOTI. Fuck, you ain't reading. Fucking dirty pictures you are looking at. Ain't reading nothing. Who the fuck are you kidding? Fucking political hypocrite. It's guys like you responsible for the mother fucking prison systems being crime factories, responsible for the mother fucking revolutionaries—

The COURT. Do you want to remain in the courtroom, Mr. Codispoti?

Mr. CODISPOTI. I don't give a fuck what you do. Two days now, those mother fuckers out there know what you people are doing. They are going to take your head off, and I'll be glad to see it too.

The COURT. Will you not give me a civil answer whether you desire——

Mr. CODISPOTI. You cocksucker, you don't deserve nothing but a fucking sword. You political hypocrite. Who the fuck are you trying to kid? If I was Rockefeller's son you wouldn't be doing this fucking bullshit.

67 The COURT. Sheriff, would you kindly remove Mr. Codispoti.

Mr. CODISPOTI. Yes. I want to get away from you. Fuck you.

The COURT. In regard to these charges in the First Specification in the Citation charging Dominic Codispoti with criminal contempt by saying "Are you trying to protect the prison authorities, Your Honor?" "Is that your reason?" I find from the background as disclosed that this statement was made and that it constituted direct criminal contempt of Court. I impose a sentence upon Dominic Codispoti of three months confinement in such institution as the Bureau of Corrections shall designate.

As to the Second Specification as to during the trial of Dominic Codispoti he said "It is only because the defendants will not sit still and be kowtowed and be railroaded into a life imprisonment," I find that statement was made, and in light of the background as disclosed by the record that it constituted direct criminal contempt, and I sentence Dominic Codispoti to confinement for a period of six months to commence

68 at the expiration of the sentence to be served in such institution as the Bureau of Corrections shall designate.

In regard to the Third Specification in which it is charged that the defendant called the Judge "Caesar" and stated "You are trying to railroad us. I have never come across such a tyrannical display of corruption in my life," I find that the defendant, Dominic Codispoti, did make these statements and from the background disclosed by the record that this did constitute direct criminal contempt, and I sentence Dominic Codispoti to confinement in such institution as the Bureau of Corrections may determine for a period of one year, to begin at the expiration of the sentence imposed under Specification Two of this Citation.

As to Specification Number Four in which it is charged that the defendant Dominic Codispoti stated in Open Court "Are you going to tell me my co-defendant is not crazy? You must be crazy to try me with him." I find that these statements were made, and from the background as disclosed by the record that this statement did constitute direct criminal contempt of Court, and I sentence Dominic Codispoti to be confined in such institution as the Bureau of Corrections shall determine for
69 a period of six months, to begin at the expiration of the sentence at Number Three Specification of this Citation.

As to the Fifth Specification of the Citation as in this trial the defendant stated "I further intend to prove there is a conspiracy between the prison authorities and this Court," I find this statement was made, and that from the background disclosed by the record that this constituted direct criminal contempt of Court, and I sentence Dominic Codispoti to confinement for a period of six months to be served in such institution as the Bureau of Corrections shall determine, to begin at the expiration of the specification and sentence imposed at Number Four in this Citation.

As to Specification Number Six I find that the defendant refused to continue with the calling of his witnesses unless the Court ordered a mistrial, and from the background as disclosed in the record I find that this created an uproar sufficient to call a cessation of the trial, and that this constituted direct criminal contempt of the Court, and I sentence Dominic Codispoti to confinement in such institution as the Bureau of Corrections shall designate for a period of six months, to begin at the
70 expiration of the sentence imposed under the Fifth Specification of this Citation.

As to the Seventh Specification charging that the defendant Dominic Codispoti by constant and boisterous and insolent conduct interrupted the Court in its attempts to charge the jury created an atmosphere of utter confusion and chaos, that the defendant did so conduct himself as disclosed by the record, and that this conduct constituted direct criminal contempt. and by reason of that direct criminal contempt I sentence Dominic Codispoti to serve a period of six months of confinement in such institution as the Bureau of Corrections may designate, this sentence to begin at the expiration of the sentence imposed in Specification Number Six. The defendant is to stand committed.

I would like to have the record show that after the defendant persisted in his insulting, insolent and foul language, and at the time he called the Judge "The most stupid Judge" he was removed from the courtroom into a reception room adjoining the courtroom in which the public address system is present, and where he remained throughout the balance of the trial yesterday. Also that this morning after the defendant per-
71 sisted in his foul language and reviling of the Court that he was also removed to the same reception room. I would like to ask the deputies to come one at a time and to inform the Court as to whether or not the loud speaker system is functioning.

72 * * * * *

Mr. BAXTER. If it Please the Court, Your Honor, to save some time I will enter into stipulation with consent of my client the two days he has been in the anteroom he could in fact hear the proceedings going on.

The COURT. Very well. That will save some time.

Mr. BAXTER. And I was just in there myself and it is of course working, functioning today.

The COURT. The sentences which are imposed today are to begin at the expiration of such sentences as the defendant is now serving. I would like to advise the defendant that he
73 has the right to appeal from these sentences. This appeal must be taken within thirty days from this date. That if he does not have funds with which to engage an attorney for the purposes of this appeal he will be provided one free of charge at public expense for the purpose of taking this appeal. Gentlemen, do you have anything that you wish to add at this time?

Mr. SEYMOUR. I have nothing.

The COURT. Mr. Baxter?

Mr. BAXTER. I have nothing, Your Honor, except I would like a transcript as soon as possible.

The COURT. We will look into the matter of supplying a transcript in this case. Of course counsel is entitled to a transcript.

Mr. BAXTER. Mr. Codispoti wants his in forma pauperis, and I think he still has that before the Court. I am asking for a copy for the Public Defender's office.

The COURT. I am going to look into and see if it is pos-
74 sible he has waived his right to a transcript. Counsel may have a transcript. I think possibly with this persistent reviling of the Court and insolent foul language after warning that it is quite possible he may have waived his individual right to have a transcript. However, I'll look into that and if it is otherwise a transcript will be furnished to him, but we will furnish counsel with a transcript.

Mr. BAXTER. Thank you, Your Honor.

The COURT. The defendant is remanded for return to Huntingdon.

75 Wednesday, January 5, 1972

Present: *Michael J. Seymour, Esq.*, Assistant District Attorney; *Fred E. Baxter, Esq.*, Assistant Public Defender.

The COURT. Mr. Baxter and Mr. Seymour, I find in reviewing the rough draft of the sentencing in the case of Commonwealth versus Codispoti—I don't have Mr. Codispoti's first name——

Mr. BAXTER. Dominic.

Mr. SEYMOUR. Dominic.

The COURT. Dominic Codispoti, that I sentenced him to a period of one year for the offense which I found to exist under the Third Specification of the Citation, and I am going to reduce that to a period of six months in place of the one year. And we will so notify the defendant. But I wanted counsel to know this at this time.

Mr. BAXTER. Your Honor, to avoid having to go ahead
76 and file a new motion on that will Your Honor consider the motion I filed on the other charges in light of the modification of sentence to have been filed in so far as this modification is concerned.

The COURT. Yes.

In the Court of Common Pleas of Allegheny County, Pennsylvania. (Criminal Division)

No. 4672 of 1965 (Citation)

COMMONWEALTH OF PENNSYLVANIA

vs.

HERBERT FRED LANGNES

PITTSBURGH, PENNSYLVANIA,
Friday, December 17, 1971.

CORAM: Hon. ROBERT VAN DER VOORT, Presiding Judge

COUNSEL PRESENT

For the Commonwealth: *Michael J. Seymour, Esq.*, Assistant District Attorney; *John G. Lehew, Esq.*, Assistant District Attorney.

For the Defendant: *Herbert F. Langnes; Fred E. Baxter, Jr., Esq.*, Assistant Public Defender.

TRANSCRIPT OF OFFICIAL NOTES OF TESTIMONY

Reported By: *Robert E. Kennelly*, Official Court Reporter.

2 Friday, December 17, 1971

Mr. PIPER. In the matter of Commonwealth of Pennsylvania versus Herbert Fred Langnes at No. 4672 of 1965. You gentlemen ready to proceed?

Mr. LEHEW. Yes, we are ready, Your Honor.

Mr. LANGNES. The defendant, myself, in this case I want to present some pretrial motions, Your Honor.

The COURT. All right, Mr. Langnes.

Mr. LANGNES. First I want to find out this, am I right in assuming this is a trial at which I am going to be sentenced?

The COURT. I'm not going to make any foregone conclusions. This is a trial on this Citation.

Mr. LANGNES. This is a trial according to the Sixth Amendment?

The COURT. Charging you with certain acts of contempt of Court. Does that answer your question, Mr. Langnes?

3 Mr. LANGNES. Yes. But this is a trial, I want to present a motion for preliminary hearing on indictment, indictment by grand jury, a trial by jury, and I want my witnesses.

The COURT. Do you have the motions there? I see something in front of you. May I see them?

Mr. LANGNES. Yes.

The COURT. One of these is in triplicate, is that right, the motion for trial by jury?

Mr. LANGNES. I believe so.

The COURT. And the other one is a motion for the Commonwealth to proceed by Complaint. I'm not going to grant these motions, Mr. Langnes, for the reason I don't believe that the proceedings is properly done by "Complaint." At least in the practice it's always been done by Citation. I presume that is still the law.

Mr. LANGNES. Then am I mistaken in understanding that this is not a trial?

4 The COURT. No. This is a trial, trial on a Citation.

Mr. LANGNES. But it's a trial, am I correct?

The COURT. Yes, sir.

Mr. LANGNES. If this is a trial this must be a trial according, you know, the provisions of the Sixth Amendment of the Constitution of the United States, or is there other provisions?

The COURT. There are quite a few decisions interpreting the Sixth Amendment of the Constitution of the United States.

Mr. LANGNES. According to Green versus U.S., and quite a few other cases any defendant facing charges more than six months, and assuming that my charges of contempt can carry two years at the maximum, we are entitled to a trial by jury.

The COURT. We have had this problem and argument with Mr. Mayberry and Mr. Codispoti, and I have taken the opposite view, and I believe no jury trial is required in this

5 case, and I am going to adhere to the same position with your motions and will therefore refuse them. EXCEPTION NOTED.

Mr. LANGNES. They are all refused, right?

The COURT. Yes.

Mr. LANGNES. All right, I got this one more motion, dirty mother fucker. Now, if you think I'm going to sit here and let you railroad me like that fucking dog Fiok, if you are going——

The COURT. If you don't clean up your language——

Mr. LANGNES. Fuck the language. Hey! If you don't clean——

The COURT. If you don't clean up your language——

Mr. LANGNES. Up your judicial system you are going to keep getting the same bullshit day in, day out, year after year after year——

The COURT. You are going to be in contempt.

6 Mr. LANGNES. In the end you people are going to lose, not us. You stinking hypocritical capitalistic dogs are going to get the same shit day after day, year after year, and before you know it you are going to die. This whole mother fucking stinking system is going to die. Now from now on this whole proceedings I'm going to disrupt it. I am going to keep on disrupting it, and you might as well, you know, just gag me now or get me out of here, or just stop the whole proceedings because I object to the whole fucking thing.

The COURT. Mr. Langnes, I declare you in contempt of Court.

Mr. LANGNES. Huh?

The COURT. I declare you in contempt of Court.

Mr. LANGNES. You might as well.

The COURT. I sentence you——

Mr. LANGNES. You might as well, and hold me in perpetual contempt of Court because I am going to keep on you

7 stinking dog, you pariah.

The COURT. I sentence you——

Mr. LANGNES. Hey, fuck what you sentence me to.

The COURT. To six months.

[Reporter's note: At this point a microphone with stand attached, sitting on the Bar in front of the defendant and for his use in addressing the Court was thrown at the Bench by the defendant.]

[Reporter's note: Immediately after above incident defendant removed from courtroom.]

The COURT. Let the record show that the defendant became violent, seized the microphone in front of him and hurled it at

the Court. Fortunately the Court was able to duck. The defendant is sentenced to a period of six months confinement in such institution as the Bureau of Corrections may select to begin at the expiration of the sentences he is now serving. This sentence being imposed for direct, immediate contempt of the Court based upon filthy and foul invective, and insolent
8 language and conduct. This case will be continued until 9:30, Monday morning.

Court adjourned until Monday, December 20, 1971 at 9:30 A.M. E.S.T.

9 Monday, December 20, 1971

Counsel present: *Michael J. Seymour, Esq., John G. Lehew, Esq.*, Assistant District Attorneys for the Commonwealth; *Fred E. Baxter, Jr. Esq.*, Assistant Public Defender for the Defendant.

The COURT. Mr. Seymour and Mr. Baxter are you ready?

Mr. SEYMOUR. Yes, Your Honor.

The COURT. The defendant Herbert F. Langnes, Junior, has been removed from the courtroom because of his unseemly conduct.

Mr. LANGNES. [Reporter's note: Mr. Langnes made a remark unintelligible to the Reporter.]

The COURT. And we will proceed with him being in there. You have something to say, Mr. Baxter?

Mr. BAXTER. Am I to understand, Your Honor, the defendant is going to remain in the anteroom?

10 The COURT. Yes.

Mr. BAXTER. I have a couple of motions then he wants me to make in his behalf.

The COURT. Very well.

Mr. BAXTER. Mr. Langnes has a request to make to the Court that his own counsel be allowed to try this case and he be given the opportunity to contact his own counsel a Mr. Joseph Lavine from Philadelphia, and he would like representation of his own counsel and opportunity to contact him for this representation.

The COURT. I take it his own counsel is not here?

Mr. BAXTER. That is correct, Your Honor. He has had no opportunity to notify counsel. Each time he has returned to the Western Penitentiary he has been placed in their security

lockup, what they call the "hole" I imagine, and not allowed to contact anyone.

The COURT. Has he requested you to contact this gentleman?

Mr. BAXTER. No, he has not.

11 The COURT. This attorney?

Mr. BAXTER. No, he has not.

The COURT. Very well. We will refuse the motion and proceed. EXCEPTION NOTED.

Mr. BAXTER. He has another motion, Your Honor. Due to the occurrence on Friday he would ask Your Honor to disqualify himself from hearing these particular contempt citations because he feels now Your Honor is prejudiced against him.

The COURT. What's the basis of that, that I was able to duck the missile that he threw?

Mr. BAXTER. I suppose just the assault that was made upon you, Your Honor, he feels that perhaps would prejudice you from hearing his case impartially and would ask you to disqualify yourself.

The COURT. Refuse that motion. EXCEPTION NOTED.

12 Mr. BAXTER. All right.

Mr. SEYMOUR. May the Commonwealth now proceed, Your Honor?

The COURT. Yes.

Mr. SEYMOUR. Call as our first witness Mr. John Goodworth.

[John H. Goodworth, a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:]

DIRECT EXAMINATION

By Mr. SEYMOUR:

Q. What is your name, please?

A. John H. Goodworth.

13–14 . . . . .

15 . . . . .

16 Q. Today we are here involved with a case against Herbert Fred Langnes for direct criminal contempt of Court, the Citation reads, first paragraph: "That while

being tried by a jury before Albert A. Fiok, Judge. On November 28, 1966, he, the defendant, accused the court of conspiracy by saying, 'For the record before he begins again, I want the record to show this is another proof of conspiracy between this Court and institution.'" Pursuant to this charge, Mr. Goodworth, I ask that you turn to Volume 4, Page 1806, and ask if you can find this language?

A. What's the page again?

Q. 1806?

A. Yes. I found it.

Q. Would you begin reading with the paragraph "By the Court" first, and then following it up with what Mr. Langnes stated?

A. By "The COURT. We overruled your objection.

"Mr. LANGNES. I know, but you limited us——

"The COURT. Remain quiet and permit to witness to testify.

"Mr. LANGNES. For the record, before be begins again I want the record to show this is another proof of conspiracy between this Court and institution."

Q. Mr. Goodworth, from your own recollection of what took place is that in substance the conversation which occurred between the Court and the defendant Mr. Langnes?

A. Yes, but it is not in substance, it is the verbatim transcript.

Q. Second charge of direct criminal contempt springs from the following language which occurred on the trial at
17 the same time of November 29th, 1966 when he, the defendant, threatened to blow the trial Judge's head off by saying, "If I have to blow your head off, that's exactly what I'll do. I don't give a damn if it's on the record or not. If I got to use force, I will. That's what the hell I'm going to do." I ask you to turn to Volume 4, Page 1840, and see whether or not you can find that language?

A. Yes, I found it.

Q. Begin reading that part—perhaps you should start with something the Court said before?

Mr. BAXTER. If it Please the Court, Your Honor, I think this line of questioning is leading. Now, the District Attorney is suggesting where he ought to read and where he not ought to read. I am going to object it is leading. I am going to object to it because I think it is being taken out of context of the entire record therefore I don't think it is admissible.

Mr. SEYMOUR. The substitute, Your Honor, would be to have him read the entire eight volumes.

Mr. BAXTER. Your Honor, I can't suggest how they try their case, but I am suggesting to the Court that this particular method is improper.

18 The COURT. Well, he has to direct the Reporter where he wants him to read, does he not?

Mr. BAXTER. I don't question that, Your Honor, except it is being taken out of context of some three thousand page transcript from the trial of this case, and there could be relevant portions twenty five pages prior to the time that any particular statement is made.

The COURT. Any reasonable amount of the record that you desire to have read we will be glad to do that after he is finished. If there is something else you feel that modifies this matter.

Mr. BAXTER. I don't know that that's my particular duty, Your Honor. I think it is the duty of the District Attorney to show——

The COURT. That's what he is doing, as I understand it. Would you simply direct the Reporter to read those portions of the record which you want read. The only other procedure would be to offer them in evidence and have Mr. Seymour read them. I don't see any reason why one is more preferable than the other.

19 Mr. BAXTER. Of course, Your Honor, at the conclusion of his testimony I intend to make the objection that it is certainly not relevant at all the Court Reporter reading any of the excerpts from the record, and that's probably why I am objecting to each individual excerpt.

The COURT. Perhaps, Mr. Seymour, we might go about it if you will qualify the entire record.

Mr. SEYMOUR. Fine, Your Honor.

The COURT. And then you can do the reading.

Mr. SEYMOUR. Very good.

The COURT. And proceed in such a manner that you will not run into this objection Mr. Baxter is making.

Mr. SEYMOUR. Very fine. I have no further questions of Mr. Goodworth except for cross-examination.

* * * * *

20-28 . . . . .

. . . . .

29 Mr. BAXTER. I would ask for an offer as to what they are being offered in evidence for, Your Honor.

Mr. SEYMOUR. It is being offered to prove that the defendant said what he is being charged with in the Citation.

Mr. BAXTER. I have no objection for that purpose, Your Honor.

Mr. SEYMOUR. Your Honor, before I begin reading from it there has been some question raised concerning the transcripts. I have asked Mr. Goodworth to take the stand again and refer to each of these pages and verify they are the same as they were at the time he prepared them.

The COURT. Very well.

[John H. Goodworth, recalled by the Commonwealth, previously sworn, testified as follows:]

30 DIRECT EXAMINATION

By Mr. SEYMOUR:

Q. Mr. Goodworth, before beginning to turn to each of these pages would you inform the Court as to how many copies were made of this transcript?

A. Yes, the original was filed with the Clerk of Courts, one copy individually to Mr. Langnes, Mr. Mayberry, and Mr. Codispoti, and there was a copy made for the District Attorney's office.

Q. I would ask you to turn to Page 1806, Volume 4, refer to that page?

A. Yes, I have it.

Q. Does that page indicate the language which was spoken at the trial?

A. Yes.

Mr. BAXTER. Objected to, Your Honor, I think that is calling for an opinion on behalf of this witness, and I think they are going to have to lay the groundwork for that as to what he has done in order to show that is in fact the page.

The COURT. Objection overruled. EXCEPTION NOTED.

Q. Now, I believe you have already answered the
31 question. It was "yes," is that correct, Mr. Goodworth?

A. Yes.

Q. Would you turn to Page 1840?

Mr. BAXTER. If it Please the Court, I don't want to interrupt any more. I would voice the same objection to that question and any other question asking for that conclusion.

Q. Did you have a chance to read the entire page, Mr. Goodworth?

A. Yes, I have.

Q. Does what you have read on that page conform with your own recollection of what occurred at the trial?

A. Yes.

Q. There have been no changes?

A. No changes.

Q. In any of the testimony which you have recorded there?

A. That's right.

Q. Turn to Page 2283, Volume 6?

The COURT. Do you want to suspend a minute?

Mr. BAXTER. I think he can continue, Your Honor.

Q. Could you read on the next page as well?

32 The COURT. Let the record show Mr. Baxter has left the room to confer with his client.

Q. Mr. Goodworth, have you had a chance to read Page 2283, and 2284, and 2285?

A. Yes.

Q. Is what you have read does it conform with your recollection of what was said at the trial?

A. That is correct.

Q. There have been no changes?

A. No changes.

Q. Turn to Page 2499—should be in the same volume?

A. It is.

Q. Have you had an opportunity to review the entire page?

A. Yes.

Q. Does the testimony as you read there conform with your own recollection as to what was said at the trial?

A. Yes.

Q. There have been no changes?

A. No changes.

Q. Would you look at Page 2614. Have you read the entire page?

A. Yes.

Q. Does what you read there conform with your own independent recollection of what was said at the trial?

A. Yes, it does.

33 Q. Are there any changes?

A. No changes.

Q. Look at Page 2618, have you read that page?

A. Yes, I have read the page.

Q. Does what you read there conform with your own independent recollection of what was said at the trial?

A. Yes, it does.

Q. Have there been any changes?

A. No changes.

Q. Lastly turn to Page—there are two pages, 3091, Volume 8, would you also look at 3094?

A. Yes.

Q. Look at Page 3091 and 3094, does the language contained therein conform with your independent recollection of what was said at the trial?

A. Yes.

Q. Are there any changes?

A. No changes.

CROSS-EXAMINATION

By Mr. BAXTER:

Mr. BAXTER. May I see that.

34 Q. How good is your independent recollection of what was said at the trial?

A. How good?

Q. Yes, sir?

A. I think pretty good. In substance I would remember what happened at the trial.

Q. You mean if I were to read to you from a page from the transcript would you tell me that was verbatim what was said at the time of the trial?

A. I would tell you it was, yes.

Q. Your recollection is that good as to what happened at the trial what was said verbatim?

A. No, it is not that good. Obviously with over three thousand pages I could not have an independent recollection of each and every instance.

Q. If I read to you a citation, a quotation from the transcript could you tell me who it was that said it?

A. Depending on what it was, yes.

Q. But you are not testifying now in your capacity as a Court

Reporter you are testifying as a person that was there at the time?

A. Yes. There is this movement between the two propositions as a Reporter and as a witness at the trial.

Q. When the District Attorney asked you for instance on Page 1806 you recall that being said you are saying in substance something like that was said, is that correct?

35 A. No, I am reading from the official transcript, and that was said.

Q. Do you have your notes from the time you took the trial to check it against that particular page?

A. The notes are available.

Q. How many transcripts have you done from the time of this trial until last Wednesday—last Wednesday or today?

A. I really wouldn't be able to count, but I would say hundreds.

Q. Do you have any specific recollections of things that were said throughout all of those transcripts?

A. No, I wouldn't say.

Q. You just particularly remember this one?

A. This particular case, yes.

Q. Now, if I were to read certain quotations from this transcript you would be able to tell me who said it, whether or not that was the exact quotation from the record?

A. No.

Q. What you are saying is when the District Attorney asks you something like that was said you recall something like that being said, is that correct?

A. Yes, but when he gives me the transcript to read that was said.

Q. You are saying the transcript said that was said?

A. Yes.

Q. Even in light of the fact that you are not sure you checked the transcript with your notes to be sure that that was said?

36 A. That is correct.

Mr. BAXTER. That's all I have.

REDIRECT EXAMINATION

By Mr. SEYMOUR:

Q. Mr. Goodworth, you indicate that you remember this particular trial, is there some reason for that?

A. Yes. This trial was certainly out of the ordinary. There were innumerable events that occurred during the trial that are not even in the citations. It received daily publicity. The physical layout of the courtroom was changed as far as the counsel tables were set up to accommodate everybody that would be in the courtroom as advisers, the defendants, and sheriffs.

Q. Prior to this particular trial did you ever recall a trial like it before?

A. No.

Mr. BAXTER. Objection. I don't think that is relevant.

The COURT. Objection overruled. EXCEPTION NOTED.

A. That I personally reported, no.

37 Q. Since this trial have you had any trials which have been anything like it?

Mr. BAXTER. Objected to also, Your Honor, as being irrelevant and calling for a conclusion.

The COURT. Sustain the objection.

Q. On each occasion when I asked you to read certain pages, Mr. Goodworth, in addition to seeing it there and that being the official Court record of what did occur there you also did have some recollection concerning each of them, did you not?

Mr. BAXTER. Object to that, Your Honor, as argumentative.

The COURT. I think we are belaboring something here. I am going to sustain the objection.

Mr. SEYMOUR. No other questions.

The COURT. Mr. Goodworth may step down. We will receive the records in evidence for general purposes for the purpose of showing what transpired in the trial.

38 Mr. SEYMOUR. Do I have the Court's permission then to read from the record in connection with each of these contempt charges?

The COURT. You are so requested, yes.

Mr. SEYMOUR. Reading from Page 1806, Volume 4 of the record by:

"The COURT. Remain quiet and permit the witness to testify.

"Mr. LANGNES. For the record, before he begins again, I want the record to show this is another proof of conspiracy between this Court and institution."

The second charge of contempt, Volume 4, Page 1840 I am reading from——

Mr. BAXTER. Your Honor, so I don't interrupt him again I want to object to the District Attorney is selecting now the context out of which he will read each individual citation and the additional verbiage that he feels is applicable, and I would object to that in every instance so I don't interrupt him.

The COURT. You may read—following him you may read whatever passages within reason you believe are explanatory of what has been read before. For that reason objection is overruled. EXCEPTION NOTED.

39 Mr. SEYMOUR. Reading from approximately the middle of Page 1840 by:

"The COURT. The motion is refused.

"Mr. LANGNES. Let me state this, Your Honor: If I can't get my rights legally, then I warn you that I will get my rights illegally, or any way I can. If I have to blow your head off, that's exactly what I'll do. I don't give a damn if it's on the record or not. If I got to use force, I will. That's what the hell I'm going to do."

In connection with the third charge of direct criminal contempt reading from Volume 6, Page 2283, reading from the bottom of that page:

"Mr. LANGNES [Indicating by throwing a pencil]" and then the following language: "Like I told you, you force this trial on me—you going to give me"—to Page 2285—"an illegal trial, I told you before what I was going to do to you, and I mean it. Now I refuse to go on with this trial if you are going to railroad me and badger my witnesses, force me to an unfair trial, that is exactly what I'm going to do, punk. I'm going to blow your head off. You understand that?" Reading in connection with the fourth charge of direct criminal contempt turn to Page 2499, from the top of the page, by:

"The COURT. Take this prisoner out of the courtroom.

"Mr. LANGNES. Go to hell."

40 Reading in connection with the same charge, Page 2614—from the bottom of 2613 by:

"Mr. LANGNES. One reason, you obviously have gotten in contact with the local papers——

"The COURT. Let the record show that this is a deliberate lie.

"Mr. LANGNES [continuing]. To sharpen the hatchet over the heads of the defendants accusing them of causing the taxpayers fifty grand which as a result gave this hearing a prejudicial atmosphere. I would like to state here for the record, and

for the papers, if need be, it is not us that is costing the taxpayers money. It is you, Mr. Maroney, and the Commonwealth that is costing the taxpayers money. We tried to get this trial over, and you denied us——"

In connection with the fifth charge of direct criminal contempt reading from Page 2618:

"Mr. LANGNES. For the record, I would like to state that as far as my personal opinion is concerned, communist Russia, communist China, and Cuba need men like you. I think wherever you came from you infiltrated the courts and the whole place might as well be communist Russia. That's all I got to say, Your Honor."

In connection with the eighth charge of direct criminal contempt reading from Volume 8, Page 3091 by:

"Mr. LANGNES. Before you proceed with the points of
41 the charge to the jury I want to say one thing definitely clear. I object to what you did to my two co-defendants, and I swear on my mother's name that I will keep my promise to you, the two threats I made. Don't worry about me interrupting during your summation. I won't even dignify these stinking proceedings, punk, go to hell, and I will shake hands in hell with you." 3092: "I will be damned to you."

Reading from Page 3094, at the bottom of the page:

"Mr. LANGNES. You are a dead man, stone dead, Your Honor." That completes the various parts of the transcript relating to the direct charges of criminal contempt against Mr. Langnes.

The COURT. I take it you are resting?

Mr. SEYMOUR. Yes, Your Honor. Along with resting, Your Honor, we offer in evidence the petition or the Citation which sets forth the various languages or parts of conduct of the defendant amounting to direct criminal contempt signed by Judge Fiok.

Mr. BAXTER. Again I would like to inquire for what purpose, Your Honor?

Mr. SEYMOUR. For the same reason that we introduced
42 it in the other case, Your Honor.

Mr. BAXTER. I would like to have that for the record in this case.

The COURT. I presume you are offering it to show what the charges are and who made the charges?

Mr. SEYMOUR. That is correct.

Mr. BAXTER. No objection for that purpose, Your Honor. At this time, Your Honor, on behalf of the defendant I would demur to the charges. Again I would point out the Commonwealth has not shown a prima facie case of criminal contempt. There are a long line of United States Supreme Court decisions showing that you must show more than just disrespect to the trial Court. The Commonwealth must show by mere convincing evidence—beyond a reasonable doubt, rather, that these particular outbursts, if they were outbursts, there is no evidence of that, did in fact obstruct justice in some way. It has not been shown nor can it be shown from the cold plain record the Commonwealth has introduced in evidence, and therefore I would ask Your Honor to sustain a demurrer to all the
43 citations for contempt.

The COURT. Do you have anything you want to say, Mr. Seymour?

Mr. SEYMOUR. Our position, Your Honor, is in that regard the transcript is the best evidence of what was said at the trial. I believe with it in evidence we need no further proof that this language did occur, and it does amount to direct criminal contempt. In fact Mr. Baxter continues to use the argument of obstructing justice. I think that direct criminal contempt in the courtroom is something that affronts the dignity of the Court, and I believe that there can be no question the language as quoted from the best evidence indicates such.

Mr. BAXTER. I would disagree with that, Your Honor. That criminal contempt involves more than an affront to the dignity of the Court. I think you must show an obstruction of justice. I think in a lot of circumstances an affront to the dignity of the Court may very well obstruct justice, but I don't think Your Honor can just infer that. I think the Commonwealth must show it. I don't think they have by the record nor
44 could they ever by just offering in evidence the record of the trial of this case, and that is the basis of my demurrer as I made before.

The COURT. Very well. We'll overrule the demurrer. EXCEPTION NOTED.

Mr. BAXTER. Your Honor, give me a couple of minutes?

The COURT. Yes.

Mr. BAXTER. Your Honor, there are witnesses we would like to call but Your Honor will not allow us by a previous ruling

to call these particular witnesses. It is difficult for us to carry on with the defense of this case under those circumstances. It is difficult for me in not having the proper time to prepare to call these witnesses and to inquire as to what they might testify to as far as the case is concerned. You have already ruled on that particular motion therefore we have no witnesses we can call and we will have to rest our case.

The COURT. You now have had twelve days, is that correct?

45 Mr. BAXTER. Yes. I was notified twelve days ago, but Mr. Langnes was in another part of the State. He wasn't brought down here until immediately before the trial. In the meantime I have been representing Mr. Mayberry, and Mr. Codispoti, as well as Mr. Langnes. And it is quite difficult to prepare all these cases at the same time even in eight days were I able to go to the institution where they were.

The COURT. I have an application here for subpoenaing of defense witnesses which I have just received. It was routed through the Clerk of Courts office, dated December 10th from the State Correctional Institution at Graterford in which Mr. Langnes is asking to subpoena witnesses Richard O. J. Mayberry, Dominic Codispoti, and Manual Madronal. As I have told you I have studied this case and other cases pertaining to it, and I believe this is a matter between the Court and Mr. Langnes, and I am therefore not going to hear any witnesses. The record will speak for the Court and Mr. Langnes and you can speak for him.

Mr. BAXTER. And under those circumstances there is nothing I can present, and I would move for a directed verdict

46 again on the same reasons I made in my motion for demurrer the Commonwealth has simply failed to prove their case.

The COURT. Your client does not desire to testify?

Mr. BAXTER. No, Your Honor.

The COURT. I gather that he does not desire to take this opportunity to make an apology to the Court?

Mr. BAXTER. I can check with him, Your Honor.

The COURT. Very well. Please do that.

Mr. LANGNES [from the anteroom]. Go to hell on your apology.

Mr. BAXTER. He has no desire to make any statement.

The COURT. Yes. I heard his remark from the Bench.

Mr. BAXTER. I would renew my motion for a directed verdict of not guilty, Your Honor, for the same reasons I demurred.

47 The COURT. Motion for a directed verdict is refused for the same reason that the demurrer was overruled. EXCEPTION NOTED.

Is there anything else, gentlemen, as far as the testimony goes?

Mr. SEYMOUR. I have nothing further.

The COURT. I guess I understand your position then, Mr. Baxter, with respect to your client.

Mr. BAXTER. That is correct, Your Honor. I would simply make another argument for a finding of not guilty on a lack of sufficient evidence.

The COURT. The testimony being closed the Court finds in connection with Specification Number One in the Citation herein the defendant is accused of saying to the Court "For the record, before he begins again I want the record to show this is another proof of conspiracy between this Court and institution," I find the defendant did make this statement, that it constituted a contempt of the Court, and for this contempt I sentence Herbert Fred Langnes to a period of two

48 months in confinement to be served in such institution as the Bureau of Corrections may determine.

With respect to the Specification in the Second item of the Citation wherein the defendant Langnes is accused of saying "If I have to blow your head off, that's exactly what I'll do. I don't give a damn if it's on the record or not. If I got to use force, I will. That's what the hell I'm going to do," I find these statements were made by the defendant, that they constitute a contempt of Court, and for that contempt I direct that he undergo confinement in such institution as the Bureau of Corrections may determine for a period of six months.

In regard to the Third Specification in which the defendant is accused of saying "Like I told you, you force this trial on me—you going to give me an illegal trial, I told you before what I was going to do to you, and I mean it. Now I refuse to go on with this trial if you are going to railroad me and badger my witnesses, force me to an unfair trial, that is exactly what I'm going to do, punk. I'm going to blow your head off. You

understand that?" I find the defendant did make these statements, that they did constitute a contempt of Court, and for that contempt I direct that Herbert Fred Langnes be
49 confined for a period of six months in such institution as the Bureau of Corrections may determine.

In connection with the Fourth Specification in which the defendant is accused of saying to the Court "Go to hell. One reason, you obviously have gotten in contact with the local papers to sharpen the hatchet over the heads of the defendants accusing them of causing the taxpayers fifty grand which as a result gave this hearing a prejudicial atmosphere. I would like to state here for the record, and for the papers, if need be, it is not us that is costing taxpayers money. It is you, Mr. Maroney, and the Commonwealth that is costing the taxpayers money." I find that these statements were made by the defendant, that they constitute a contempt of Court. For that contempt I sentence Herbert Fred Langnes to undergo confinement in such institution as the Bureau of Corrections may determine for a period of six months.

In connection with the Fifth Specification in which the defendant is accused of saying "For the record, I would like to state that as far as my personal opinion is concerned, communist Russia, communist China and Cuba need men like you. I think wherever you came from you infiltrated the
50 courts "and the whole place might as well be communist Russia." I find that the defendant made these statements, they constitute contempt of Court. For that contempt of Court I sentence Herbert Fred Lagnes to confinement in such institution as the Bureau of Corrections may determine for a period of six months.

In connection with the Sixth Specification in the Citation in which the defendant is accused of saying "I object to what you did to my two co-defendants, and I swear on my mother's name that I will keep my promise to you, the two threats I made. Don't worry about me interrupting during your summation. I won't even dignify these stinking proceedings, punk, go to hell, and I will shake hands in hell with you. I will be damned to you. You are a dead man, stone dead. Your Honor." I find the defendant did make these statements, and that they constitute a contempt of Court. For this contempt I sentence Herbert Fred Langnes to confinement for a period of six months in such institution as the Bureau of Corrections may select.

In these findings I am finding that these contempts were direct criminal contempts of Court. I direct confinement announced at this time begin at the expiration of the
51 sentence of six months which this Court imposed on December 17th for direct criminal contempt which Herbert Fred Langnes exhibited toward the Court at that time. I direct that each of these sentences which I pronounced today begin to run at the expiration of each other, that is that they be consecutive and not concurrent. I direct at the conclusion of this trial Herbert Fred Langnes be conveyed to the State Correctional Institution at Graterford. The sentences which were imposed this morning, and in regard to the sentence imposed on December 17th Mr. Herbert Fred Langnes you have the right to take an appeal. This appeal must be taken within a period of thirty days. If you have your own counsel to take those appeals all well and good. If you are unable to obtain counsel to take these appeals you will be provided counsel free of charge in the person of an attorney appointed by the office of the Public Defender.

The Court. Gentlemen, is there anything else? In order that there be no misunderstanding these sentences imposed today and on December 17th will begin and take effect at the expiration of the sentences which Herbert Fred Langnes is now
52 serving. The defendant will now stand committed.

[Mr. Langnes from anteroom made remarks unintelligible to this Reporter.]

Supreme Court of the United States

No. 73-5615

OCTOBER TERM, 1973

DOMINICK COSISPOTI AND HERBERT LANGNES, PETITIONERS

v.

PENNSYLVANIA

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania, Western District.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to Questions 1 and 2 presented by the petition which read as follows:

"1. Should petitioners receive cumulative sentences for contempt of court imposed at the end of a trial where the total effective sentence received must be used rather than the individual sentences in order to determine the seriousness of the contempt and thereby determine whether the accused should be afforded the right to a jury trial"

"2. Should the strong possibility of a substantial term of imprisonment require that an accused be afforded the right to a jury trial?"

DECEMBER 3, 1973.

(93)

U.S. GOVERNMENT PRINTING OFFICE: 1974

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-5615

DOMINIC CODISPOTI and
HERBERT LANGNES,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR PETITIONERS

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OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR PETITIONERS

OPINION BELOW

The Opinion of the Supreme Court of the Commonwealth of Pennsylvania is reported at 453 Pa. 619.

JURISDICTION

The Judgment of the Supreme Court of the Commonwealth of Pennsylvania was entered on July 2, 1973. The Petition for a Writ of Certiorari was filed on October 2, 1973 and was granted on December 3, 1973. Jurisdiction in this Court is conferred by 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitution of the United States:

Article III, §2, "The trial of all crimes, except in cases of impeachment shall be by jury . . ."

Amendment VI – "In all criminal prosecutions, the accused shall enjoy the right to a speedy and just trial by an impartial jury of the State and district wherein the crime shall have been committed, and to be informed of the nature and cause of the accusation * * *."

Statutes of the United States

Title 18, U.S.C. §1, "Notwithstanding any Act of Congress to the contrary:

1. Any offense punishable by death or imprisonment to a term exceeding one year is a felony.

2. Any misdemeanor the penalty for which does not exceed imprisonment for a period of six months "is a petty offense and does not therefore require a jury trial."

Statutes of the Commonwealth of Pennsylvania

Pa. Stat. Ann. 17, §2042. "The punishment of imprisonment for contempt as aforesaid shall extend only to such contempts as shall be committed in open court, and all other contempts shall be punished by fine only."

QUESTIONS PRESENTED

I. Is the defendant entitled to a jury trial when he receives cumulative sentences for contempt of court imposed at the end of the trial and the sentences effectively imprison the defendant for a period in excess of six months?

II. Does the strong possibility of a substantial term of imprisonment require that an accused must be afforded the right to a jury trial in a contempt of court case?

STATEMENT OF THE CASE

The Petitioners, Dominic Codispoti and Herbert Langnes, together with a co-defendant, Richard O. Mayberry, were convicted of criminal contempt in the Court of Oyer and Terminer of Allegheny County, Pennsylvania. The alleged contempt occurred during a six week jury trial on charges of Prison Breach and Holding Hostages in a penal institution. During the course of the trial, Petitioner, Codispoti, accused the judge of trying to protect the prison authorities, railroading the Defendant into life imprisonment, being tyrannical and corrupt. He called the judge "crazy" to believe the co-defendant, Mayberry was sane after a courtroom outburst. He alleged a conspiracy between the judge and the prison authority and in general he was charged with engaging in boisterous and insolent conduct. (App. 33) Petitioner, Langnes, also accused the court of conspiracy, of railroading him, of acting like a convict and he told the court to "go to hell" and offered to shake hands with the judge when they both met in hell. (App. 30)

At the termination of the trial, Judge Albert Fiok summarily sentenced the Defendants from a minimum of one to a maximum of two years consecutive on each of the counts of contempt. Petitioner Codispoti received a total sentence of seven to fourteen years, and Petitioner, Langnes, received a total sentence of six to twelve years. Mr. Mayberry, the co-defendant, received eleven to twenty-two years.

The Defendants all appealed their contempt sentences to the Pennsylvania Supreme Court, which in November, 1968, affirmed their conviction with several dissents based upon the theory of cruel and unusual punishment and the right to a jury trial. (App. 8)

Co-defendant, Mayberry's pro se petition to this Court for a Writ of Certiorari was granted and in January, 1971,

this Court vacated the judgment and remanded the case for further proceedings. (App. 17)

On December 6, 1971, the original state trial court Judge, Albert A. Fiok, issued a contempt citation against the Petitioners and Richard Mayberry, which was to be served on them by registered mail. On December 16, 1971, Petitioner, Langnes, came on for trial and on December 17, 1971, Petitioner, Codispoti came on for trial. Both requested a jury trial and both were denied by the hearing judge, the Honorable Robert Van der Voort.

The trial atmosphere was a somewhat tense one. Mr. Codispoti requested that he be able to have counsel of his own choice to represent him. He stated that on two prior occasions he had written to Judge Fiok requesting an indication of the disposition of the charges, but the judge did not respond to his letter. He had contacted an attorney who had agreed to represent him, but Codispoti only knew one day before the trial that his case was scheduled. The Court then noted that his chosen attorney was not present in the courtroom, and ordered appointed counsel to proceed, even though appointed counsel was unwilling. (App. 43) Petitioner, Codispoti's request for a jury trial was denied as follows:

> The Court: I regard this issue, Mr. Codispoti, as an issue between the Court, not any particular Judge, but between the Court and you, and I think that the record should speak for the Court, and you can speak for yourself, and I'm going to refuse the motion for a jury trial. (App. 45)

A motion was made for production of the defense witnesses. The court again denied the motion in substantially similar language.

> The Court: I am going to refuse your motion to subpoena witnesses for the reasons I have told you. I think this is an issue between the Court and you,

and the record will speak for the Court, and you and counsel can speak for yourself. (App. 47)

The Petitioner Codispoti's frustration at the conduct of contempt proceeding can be sensed by the outburst as follows:

Mr. Codispoti: There is one thing I want to make clear. I came in this courtroom trying to be respectful. Right?

The Court: You have been.

Mr. Codispoti: You know I got ninety years. Right? In fact this is immaterial–

The Court: Excuse me. I do not know that you have ninety years.

Mr. Codispoti: I got fifty years right on that one charge.

The Court: No, I don't. Now that you tell me I know.

Mr. Codispoti: I did not come to this courtroom trying to create a scene or a circus atmosphere. As long as you afford me the right under due process of law I will conduct myself as a gentleman. But if I think you are going to railroad me, mother fucker, you can get that straight jacket again. You understand? Now, you can just run me out of this courtroom, get your blackjack, get your straight jacket, but I don't give a fuck. I am doing ninety years. Now, if you want to make a circus out of this, Chicago Eight, go ahead baby, but if you want to go by the law I will go by law. Make it easy on yourself because I don't give a fuck one way or the other. Now, you do what you want to do. (App. 47)

A similar situation existed with reference to Petitioner Langnes in his trial. (App. 75, 76, 89)

The trial judge found Codispoti guilty as charged and imposed a sentence of three months on one contempt,

six month sentences on five contempts and a year sentence on one contempt. (App. 70) After about a month, the trial judge revised his "rough draft" sentence to six months instead of the year for the last contempt charge. (App. 73) All sentences were made to run consecutive, so that Petitioner, Codispoti has an effective total of three years, two months.

A similar situation existed with Petitioner, Langnes, who was found guilty of all six charges, and sentenced to five terms of six months each and one term of two months so that Langnes has an effective sentence of two years, eight months. (App. 90)

An Appeal was filed in the Pennsylvania Supreme Court and by an Order dated July 2, 1973, the Pennsylvania Supreme Court affirmed the lower court's judgment of sentence. Justice Manderino filed a lone dissenting Opinion on the basis of *United States v. Seale.*

This Court granted Certiorari on December 3, 1973.

ARGUMENT

I.

WHEN PETITIONERS RECEIVE CUMULATIVE SENTENCES FOR CONTEMPT OF COURT IMPOSED AT THE END OF A TRIAL THE TOTAL EFFECTIVE SENTENCE RECEIVED MUST BE USED RATHER THAN THE INDIVIDUAL SENTENCES IN ORDER TO DETERMINE THE SERIOUSNESS OF THE CONTEMPT AND THEREBY DETERMINE WHETHER THE ACCUSED SHOULD BE AFFORDED THE RIGHT TO A JURY TRIAL.

In *Bloom v. Illinois,* 391 U.S. 194, this Court squarely faced the issue whether all criminal contempts could be tried without affording the accused a right to a jury trial ruling that serious contempts required the right to a jury trial. The basis of the decision was two-fold. First, a

criminal contempt is indistinguishable from an ordinary criminal conviction and, therefore, deserves the same jury trial protection. Secondly, and more compellingly, a jury trial provides "protection against the arbitrary exercise of official power", 391 U.S. at 202.

Admittedly, a right to a jury trial exists only in serious offenses, and usually in order to determine the seriousness of the offense, the Court uses as a relevant indication the severity of the penalty authorized for the commission of the crime, *Frank v. United States*, 395 U.S. 147. However, where no statutorily mandated penalty is prescribed, then the Court normally looks to the penalty actually imposed to determine whether the offense is petty or serious. The Federal standard as embodied in *18 U.S.C. 1* states, "any misdemeanor the penalty for which does not exceed imprisonment for a period of six months" is a petty offense and does not therefore require a jury trial." See *Cheff v. Schnackenberg*, 384 U.S. 373, 379.

The lower court in this case held the Petitioners were not entitled to a jury trial because they only looked at the individual sentences, none of which individually exceeded six months and, therefore, concluded that the offenses of contempt were "petty."

It is urged by the Petitioners that where a judge waits until the termination of a trial to sentence a contemnor for several specific contempts, then the aggregate or total effective sentence required the impanelling of a jury for the contemnor.

The basis of the Petitioners' contention rests on several grounds. First, this case does not fit within the traditional reasons for denying a jury trial; second, the potential for judicial abuse alone demands a jury trial and finally, there exists strong policy reasons why there should be a jury trial in this case.

A. The Traditional Policy Reasons for Denying a Jury Trial for "Petty Offenses" Do Not Apply Where There Is a Single Delayed Trial Covering Several Individual Contempts.

Currently, the Supreme Court interprets the Constitution as not requiring a jury trial for defendants charged with "petty" contempts because of several policy reasons, but none of these reasons have any persuasive value in a case such as this.

The first reason advanced is the prophylactic value of immediate punishment as a deterrent against future similar conduct in the same proceeding. Naturally, the Courts have a legitimate interest in protecting protracted judicial proceedings from continuous disruptive behavior and by permitting a trial judge to impose a mild penalty for misbehavior, the Courts will often prevent further occurrences during the same trial. In the instant case, however, where the hearing on the contempts occur after the original trial is completely over, there isn't even a remote possibility of deterence.

The other principal reason for denying a jury trial for petty offenses has been the judgment that the need for judicial economy outweighs the right of a defendant to the protection afforded by a jury.

Counsel for Petitioners does not agree with the previous majority Opinions of this Court that a six months jail sentence is a "petty" imposition upon the individual, but there is practical support since the punishment meted out for most contempts is either a small fine or a very short imprisonment for a few days. Further, fines have often been remitted when judicial tempers have cooled. In this case, however, when the defendants actually face imprisonment for several years for a series of events occurring over several weeks, it is difficult to look at this incident as "petty", thereby outweighing the defendants' rights.

Another aspect of judicial necessity has also been advanced as a reason for denying a jury trial, because, by treating the contempts summarily, they may be immediately handled without delaying or terminating the main judicial proceeding.[1] Again, the problem with this logic applied to the instant case is that since the main proceeding has already been terminated, there can be no possible delay in the main proceedings and the punishment of a sentence following a trial is no less because a jury has been interposed between the judge and the defendant.

B. The Potential for Judicial Abuse Requires the Imposition of a Jury Between the Judge and a Defendant.

The Court has long recognized the necessity of limiting judicial power in contempt cases by interposing procedural safeguards between a human judiciary and a defendant charged with contempt.[2] Generally a judge is looked upon as the impersonal arbiter dispensing justice with no preference or personal interest in the outcome of the case. Exactly the opposite is the situation in a direct criminal contempt case. The judge himself may be either the person villified or, if not the recipient of a personal

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[1] See *In Re Dobbs*, 156 U.S. 565 (1895) at 596. "The summary power to commit and punish for contempts tending to obstruct or degrade the administration of justice is inherent in courts of chancery and other Superior courts as essential to the protection of their power and to the maintenance of their publicity . . ."

[2] See *Sacher v. United States*, 343 U.S. 1, at 12 (1925): "That contempt power over counsel, summarily or otherwise, is capable of abuse is certain. Men who make their way to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance and other weaknesses to which the human flesh is heir."

attack, probably the attack was on a close personal friend and a day-to-day associate and working coleague. Even if these facts are not present, the judge has a vital interest in redressing an affront to the respect of the Court, which by association is also a vicarious affront to the trial judge.

Theoretically, one must recognize the potential for abuse by basing the jury trial requirement upon the punishment attributed to a single offense and concomitantly ignoring the aggregate effect upon the individual. Any judge may ignore the jury trial requirement in a case involving one protracted proceeding by the simple expedient of isolating the events in a continuous course of conduct, thereby individually prosecuting the alleged multiple contempts. Indeed, the judge in a situation involving legitimately isolated contempts may avoid the jury trial requirement on serious offense by distributing the greater punishment for the serious offenses over several petty offenses, thereby keeping each one within the six month proscription.

While the divergence between general legal theory and particular fact has been long recognized in contempt cases of this type, they coincide. In *United States v. Seale*,[3] Judge Hoffman, by isolating occurrences and aggregating the punishment, was able to impose a four year jail sentence for a series of "petty" contempts. Indeed, he accomplished this with not only one defend-

[3] 451 F.2d 345 (7th CCA, 1972).

ant but with several.[4] In this particular case, Judge Robert Van der Voort was able to give the petitioners effective sentences from three years, two months to two years, eight months. (App. 90). In fact, a sentence of one year was given to petitioner (App. 70), Codispoti, and when the effect of the error was realized, the judge reduced the sentence to six months (App. 73).

C. There Are Several Strong Policy Reasons for Affording a Jury Trial in a Case Such as This.

One of the main problems inherent in exercising the contempt power of the Court is the difficulty of the defendant perceiving the Judge as an impartial arbiter. Unlike a normal judicial proceeding, in direct criminal contempt cases, the Judge is the person who initiates the charge, the prosecutor, the trier of fact and, finally, the person who metes out the sentence.

In this particular case, the Judge emphasized on several occasions to the petitioners that this matter was between the petitioners and the Court, and that the record would

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[4] The contempt sentences imposed were:

Defendant	*Charges*	*Sentence*
Dellinger	32 specifications	2 years, 5 months, 16 days
Davis	23 specifications	2 years, 1 month, 14 days
Hayden	11 specifications	1 year, 2 months, 14 days
Hoffman	24 specifications	8 months
Rubin	16 specifications	2 years, 1 month, 23 days
Weiner	7 specifications	2 months, 18 days
Froines	10 specifications	5 months, 15 days
Weinglass (Attorney)	14 specifications	1 year, 8 months, 28 days
Kunstler (Attorney)	24 specifications	4 years, 13 days

THE TALES OF HOFFMAN 287-89 (M. Levine, G. McNamee & D. Greenberg ed. 1970)

speak for the Court and the petitioners could speak for themselves. (App. 45, 47).

The extreme sense of the petitioner's frustration was apparent in Petitioner Codispoti's outburst when he stated that he tried to act as a gentleman, but that the Court appeared to be so biased and had so prejudged his case that he had no respect for the Court. (App. 47). This allegation is particularly illuminating in light of the contempt citation in which Codispoti was cited for contempt for accusing the trial judge of being in league with prison authorities.

The great benefit that would inure if a jury trial were required in this instance is the appearance of impartiality. As stated by Mr. Justice White in *Baldwin v. New York*:

> "But the primary purpose of the jury is to prevent the possibility of oppression by the Government; the jury interposes between the accused and his accuser the judgment of laymen who are less tutored perhaps than a judge or panel of judges, but who at the same time are less likely to function or appear as but another arm of the Government that has proceeded against him." 399 U.S. at 72

Secondly, it is unwise for this Court to permit unnecessary extension of the contempt power of a trial judge. An extension is directly contrary to the long held notion that such power should be limited to the "least possible power adequate to the end proposed". *Anderson v. Dunn*, 6 Wheatl 204, 231. Indeed, it would be contrary to the continued policy of this Court over a period of several years to afford defendants charged with contempt the procedural safeguards that are afforded defendants in normal criminal cases.

> Such sweeping statutory authority must necessarily be limited. [T]he grant of summary contempt power . . . is to be grudgingly construed so that the instance where there is no right to a jury trial will be

narrowly restricted to the bedrock cases, when the concession of drastic power to the courts is necessary to enable them to preserve . . . authority . . . order . . . (and) decorum . . . *Farese v. United States*, 209 F.2d 312, 215 (1st Cir. 1954)

The recent decision of *United States v. Seale*, 461 F.2d 345 (7th Cir. 1972), adopted this reasoning in requiring that multiple contempts must be cumulated if the judge waits until the termination of the trial to sentence the contemnors.

"If a judge may wait until the termination of a trial to cite a contemnor with numerous charges of contempt, penalizing each specified instance with a sentence of six months or less and thereby avoid impanelling a jury, the potential for abuse is obvious. Utilizing this procedure any judge could review the record to single out 'discrete' instances of contempt, impose up to six month consecutive sentences for each instance and thereby imprison the contemnor for a theoretically unlimited term. He would in effect, have the power whether the safeguard of a jury trial should be interposed wholly apart from the total punishment he metes out". 461 F.2d at 353.

II.

THE STRONG POSSIBILITY OF A SUBSTANTIAL TERM OF IMPRISONMENT REQUIRE THAT AN ACCUSED MUST BE AFFORDED THE RIGHT TO A JURY TRIAL.

The Pennsylvania Statute (Pa. Stat. Ann. 17 §2042) authorizing imprisonment for contempt of court theoretically subjected the Petitioners to unlimited prison sentences because no limitation upon the length of imprisonment had been statutorily imposed. This case,

therefore is controlled by *Baldwin v. New York*, 399 U.S. 66, wherein the defendant upon conviction was liable to a minimum one year sentence for jostling. This Court held in *Baldwin*, that the defendant must be afforded a jury trial "*on the basis of a possible penalty alone*" exceeding six months. And it is only "[w]here the accused *cannot* possibly, face more than six months imprisonment" that the need for a jury trial is outweighed by other considerations. (Emphasis added).

Moreover the Petitioners were not only faced with the theoretical legal possibility of a substantial sentence, they had indeed earlier received sentences in excess of twenty years for their acts from the Judge who had first sentenced them. There were absolutely no indication what sentence they would receive from the new trial Judge if they were found guilty. However as an indication of how the courts viewed their acts, Mr. Justice Douglas charterized their actions as a shock to those raised in the Western tradition.[5] The Chief Justice of Pennsylvania Supreme Court termed their conduct "outrageous"[6] and the trial court called their actions "dispicable, insolent and shocking".

In this case the Petitioners faced a judge presumably unfamiliar with their case and therefore incapable of assessing a penalty before the trial began. Nonetheless, the real possibility existed that a sentence of more than six months would result, thereby fulfilling the requirement of *Baldwin.*

By refusing to initially grant a jury trial the lower court judge arbitrarily prejudged the case and decided

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[5] App. 17.

[6] App. 20.

that the offense was petty and more importantly deprived the Petitioners of a right to interpose a jury of fact-finders between themselves and the judge. The Judge sentenced Petitioner, Codispoti, to one year evidencing that the contempt was indeed serious. The subsequent reduction of the sentence to six months was a fruitless gesture.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request the relief requested be granted.

Respectfully submitted,

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IN THE

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Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

BRIEF FOR RESPONDENT

Opinion Below

The Opinion of the Supreme Court of Pennsylvania is officially reported at 453 Pa. 619, 306 A.2d 294 (1973).

Jurisdiction

Respondent agrees that jurisdiction is vested in your Honorable Court under 28 U.S.C. § 1257 (3).

Constitutional Provisions and Statutes Involved

1. Article III, Section 2, of the Constitution of the United States:

   "The trial of all crimes, except in cases of impeachment shall be by jury . . ."

2. Amendment VI to the Constitution of the United States:

   "In all criminal prosecutions, the accused shall enjoy the right to a speedy and just trial by an impartial jury . . ."

3. Amendment Fourteen to the Constitution of the United States:

   "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. Pennsylvania Contempt Statutes—Act of 1836, June 16, P.L. 784, § 23, 24, 17 P.S. § 2041, 2042.

   CLASSIFICATION OF PENAL CONTEMPTS.

   The power of the several courts of this Commonwealth to issue attachments and to inflict summary punishments for contempts of court shall be restricted to the following cases, to-wit:

   I. To the official misconduct of the officers of such courts respectively;

   II. To disobedience or neglect by officers, parties, jurors, or witnesses of or to the lawful process of the court;

   III. To the misbehavior of any person in the presence of the court, thereby obstructing the administration of justice. 1836, June 16, P.L. 784, § 23.

PUNISHMENT FOR CONTEMPT.

The punishment of imprisonment for contempt as aforesaid shall extend only to such contempts as shall be committed in open court, and all other contempts shall be punished by fine only. 1836, June 16, P. L. 784, § 24.

Questions Presented

1. Whether the total effective sentence received must be used rather than the individual sentences in order to determine the seriousness of the contempts and thereby determine the right to jury trial when the sentences for direct contempt of court are imposed at the end of a trial?

2. Whether the strong possibility of a substantial term of imprisonment requires that an accused be afforded the right to a jury trial?

Statement of the Case

A. The Circumstances of the Contempt Citations.

Petitioners, along with co-defendant Richard O. J. Mayberry, were indicted at No. 4672 of 1965 in the Criminal Courts of Allegheny County, Pennsylvania, on counts of: 1) Holding Hostages in a Penal Institution, and 2) Prison Breach. Pleas of not guilty were entered and trial commenced on November 10, 1966, before the Honorable Albert A. Fiok and a jury. After waiving their respective rights to counsel, petitioners acted as their own counsel although court-appointed counsel advised them throughout the trial. On December 9, 1966, the jury returned a verdict of guilty as to both counts of the indictment as to all of the defendants. At the conclusion of the trial, Judge Fiok also sentenced petitioners and co-defendant Mayberry for several acts of criminal contempt occurring at various times during

the twenty-two day trial. Petitioner Codispoti was sentenced on seven separate citations to terms of one to two years on each citation. Petitioner Langnes was sentenced on six separate citations to terms of one to two years on each citation.

B. The State Court Appeal.

Co-defendant Mayberry and petitioners appealed their contempt convictions to the Supreme Court of Pennsylvania. After oral argument on November 12, 1968, the Supreme Court of Pennsylvania affirmed the sentence of the lower court. *Commonwealth v. Mayberry,* 434 Pa. 478, 255 A.2d 131 (1969).

C. The Appeal to the United States Supreme Court.

On April 8, 1970, your Honorable Court granted co-defendant Mayberry's *"pro se"* Petition for Writ of Certiorari. Mayberry contended: (1) that he was entitled to a a nonsummary court trial or at least a hearing on the sentence; (2) that his right to counsel had been violated; (3) that under the circumstances he was entitled to have his criminal contempt charges heard by a judge other than the one who presided over his trial; (4) that the Pennsylvania Criminal Contempt Statute was unconstitutionally vague; (5) that his sentence of 11 to 22 years constituted cruel and unusual punishment in violation of the eighth and fourteenth amendments.

On January 20, 1971, in an Opinion and Order by Justice Douglas, this Court vacated the judgment of the lower court and remanded the case for further proceedings. The Opinion contained the following:

> Our conclusion is that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a pub-

lic trial before a judge other than the one reviled by the contemnor. See *In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682. In the present case that requirement can be satisfied only if the judgment of contempt is vacated so that on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, sits in judgment on the conduct of petitioner as shown by the record.

Vacated and remanded. *Mayberry v. Pennsylvania*, 400 U. S. 455, 466, 91 S. Ct. 499, 505 (1971).

D. Proceedings on Remand to the Court of Common Pleas of Allegheny County, Pennsylvania.

In compliance with the Opinion of the United States Supreme Court, trials were held before the Honorable Robert Van der Voort, Presiding Judge, for each of the petitioners individually on their respective contempt citations. Each of the petitioners chose to represent themselves but were advised by Fred E. Baxter, Jr., Esquire, Assistant Public Defender. Each of the petitioners was allowed to cross examine prosecution witnesses and present testimony in their own defense.

Petitioner Codispoti's trial began on December 16, 1971, and ended on the following day. He was found guilty of seven separate contempts and sentenced to five terms of six months, one term of three months, and one term of twelve months, sentences to run consecutively. On January 5, 1972, the twelve-month sentence was reduced to six months.

Petitioner Langnes' trial began on December 17, 1971, but was continued to December 20, 1971, after appellant seized a microphone in front of him and hurled it at the Court. He was found guilty of six separate contempts and received sentences of five terms of six months and one term of two months, to run consecutively.

E. The Second State Court Appeal.

On January 17, 1972, petitioners, along with co-defendant Mayberry, again appealed their contempt convictions to the Pennsylvania Supreme Court.

By an Order filed on July 2, 1973, the Pennsylvania Supreme Court affirmed the lower court's judgment of sentence. Justice Manderino filed a dissenting opinion on the basis of *United States v. Seale,* 461 F.2d 345 (7th Cir. 1972). *Commonwealth v. Mayberry,* 453 Pa. 619, 306 A.2d 294 (1973).

A Petition for Writ of Certiorari to your Honorable Court was docketed on October 4, 1973. Respondent received notice that the petition had been docketed on October 29, 1973, and thereafter filed an answer to the Petition. On December 3, 1973, this Honorable Court granted the Petition limited to the two questions discussed herein.

ARGUMENT

I. The individual contempt sentences must be used rather than the total effective sentence received in order to determine the seriousness of the contempts and thereby determine the right to jury trial when the sentences for direct criminal contempt of court are imposed at the end of a trial.

Petitioners argue that they were entitled to a jury trial on their contempt charges on the basis that the sentences which they received on the different charges should be aggregated so as to exceed six months. They contend that to not aggregate the sentences is an unnecessary extension of judicial contempt power and that their separate offenses should be viewed as one continuing "serious offense." With this rationale, the Commonwealth must disagree.

A defendant's right to a jury trial for a "serious offense" was established by your Honorable Court in *Duncan v. Louisiana*, 391 U.S. 145 (1968), and *Bloom v. Illinois*, 391 U.S. 194 (1968). The exact definition of what constituted a serious offense was unclear until *Baldwin v. New York*, 399 U.S. 66 (1970), which held that, for purposes of the right to trial by jury, a serious offense is one "where imprisonment for more than six months is authorized." Where there is no statutory authorization of a maximum sentence for the crime, the Court held that the criterion that must be examined to test for seriousness is the length of the sentence which the lower court actually imposed. *Bloom v. Illinois*, 391 U.S. at 211; *Cheff v. Schnackenberg*, 384 U.S. 373 (1966). *Frank v. United States*, 395 U.S. 147 (1969).

In the instant case, in response to the remand by your Honorable Court,[1] petitioners were tried and found guilty of various contempt charges and ultimately sentenced to six months or less on each charge. Petitioners now argue that the sentence received for their separate adjudications of contempt should be combined to artificially create a single offense. This "imaginary" offense would then require a jury trial. The Commonwealth submits that your Honorable Court purposely chose the seriousness of the crime as the controlling standard—in this case determined by the actual sentences imposed. Application of the federal standard was never meant to depend on the happenstance of the number of separate crimes that were, by chance, combined in a single trial for purposes of expediency.[2]

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[1] See *Mayberry v. Pennsylvania, supra.*

[2] See *City of Monroe v. Wilhite*, 225 La. 838, 233 So. 2d 535, *cert. denied* 400 U.S. 910 (1970) where the defendant had been charged in two separate affidavits with driving while intoxicated and speeding,

(Footnote continued on following page)

Prior to its decision in the instant case, the Pennsylvania Supreme Court dealt with this specific issue in *Commonwealth v. Snyder*, 443 Pa. 433, 275 A.2d 312 (1971). There the Pennsylvania court unanimously held that the defendant was not entitled to a jury trial when two separate criminal contempts were tried together at the conclusion of defendant's trial and the defendant was sentenced to three months on the first citation and six months on the second citation. As the Pennsylvania criminal contempt statute does not provide a maximum term from which the "seriousness" of the offense can be judged, the Pennsylvania Court in *Snyder*, following *Bloom v. Illinois, supra*, looked to the actual sentence imposed and found that neither sentence exceeded the more than six month standard established in *Baldwin v. New York, supra*, and therefore a jury trial was not required.[3]

Petitioners argue that the present state of the law of Pennsylvania which does not allow aggregation of sentences to determine the seriousness of the offenses is an

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(Footnote continued from preceding page)
both offenses arising out of the same act. Each offense carried a maximum penalty of six months in jail and/or a $500.00 fine. The two offenses were consolidated for trial and the defendant raised the question of his right to a jury trial on the basis of the aggregated possible maximum of one year in jail and a $1,000.00 fine. The Supreme Court of Louisiana held that aggregation was not required in order to determine the defendant's right to a jury trial. This court denied the defendant's petition for certiorari. See also *State v. James*, 76 N.M. 416, 419-420, 415 P. 2d 543, 546 (1966); *Scott v. District of Columbia*, 122 A.2d 579, 581 (D.C. Ct. App. 1956) and *United States v. Merrick*, 459 F.2d 644 (4th Cir. 1972).

[3] Although *Synder's* holding was rejected in *United States v. Seale, supra*, relied upon by petitioners, other jurisdictions have by way of dicta assumed a position on the same issue consistent with *Snyder*. See *e.g. Wiess v. Superior Court*, 106 Ariz. 577, 579, 480 P.2d 3, 5 (1971), *State v. Koscot Interplanetary Inc.*, 69 Misc. 2d 421, 330 N.Y.S. 2d 492 (Sup. Ct. 1972).

unnecessary extension of judicial contempt power. Petitioners' argument carries little weight in light of the fact that, as recently as nine years ago, the crime of criminal contempt was considered summary in nature and a person charged with criminal contempt did not have a constitutional right to a jury trial. *United States v. Barnett*, 376 U.S. 681 (1964), rehearing denied 377 U.S. 973. Furthermore, the courts historically have had extensive power to sentence a defendant for contempt during trial. It is inaccurate and misleading to label the present state of the law in Pennsylvania an "extension" of judicial contempt power.

The Court in *United States v. Seale, supra*, would seem to make a distinction regarding the so-called aggregation rule where the trial judge immediately cites and sentences a contemptuous defendant as opposed to a post-trial hearing on the contemptuous acts on the basis of a potential for judicial abuse of the contempt power that is greater at the post-trial stage.[4]

While the court in *Seale* contended that where a judge reserves sentencing until the end of trial, the defendant should have the right to a jury trial as a protection against the arbitrary exercise of official power, the court also recognized the necessity for a judge to be able to cite and punish contempt immediately upon its occurrence without regard for whether the aggregate of the sentence is imposed exceeds six months. This anomalous position was

[4] Subsequent to *Seale* Judge Cummings, in *In re Chase*, 468 F.2d 128 (7th Cir. 1972) spoke again to the distinction for aggregation of sentences and the right to a jury trial purposes of immediate during trial citation and sentencing for contempt and the post-trial procedure in *Seale* and held non-aggregation to be the rule when immediate or periodic citation and sentencing is carried out. However, Judge Cummings stated also that immediate citing and sentencing ". . . may still deny the contemnor a jury trial if it oppressively converts a single continuing offense into a series of individual ones." 481 F.2d at 135.

explained by the contention that here is a greater opportunity for abuse of discretion when the judge waits until the end of trial to sentence for contempt than when the judge sentences for contempt immediately upon its occurrence. Furthermore, the *Seale* court made this contention in apparent disregard of the safeguard required by your Honorable Court that a trial judge must refer sentencing to another judge when sentencing is reserved until the end of trial. *Mayberry v. Pennsylvania, supra.*

The curious position assumed by the Seventh Circuit ignores the fact that the greater opportunity for abuse of discretion does not lie at the end of trial when tempers have cooled. On the contrary, the greater opportunity for abuse of discretion exists during the trial when the trial judge is under stress. That this is the more accurate view of the situation is impliedly recognized by a trial judge when he wisely reserves sentencing until the end of the trial so that he or another judge may review the record insulated by time from the emotions generated in the courtroom.

The foundation for the Seventh Circuit Court's decision was laid in *Mayberry v. Pennsylvania, supra,* where your Honorable Court determined that, where a judge reserves sentencing until the end of trial, another judge "not bearing the sting of these slanderous remarks and having the impersonal authority of law" should sit in judgment on the record. The *Mayberry* decision was an attempt to honor two important principles, to wit, that a judge should retain the power of cite and sentence for contempt *sua sponte* in order to preserve order in the courtroom and that if the opportunity avails itself, it is desirable for another less impassioned judge to sit in judgment and sentence the defendants for their conduct. While this decision has

obvious merit, it must be limited in scope and cannot serve as a basis judicial extensions such as proposed by the petitioners. The Commonwealth submits that adopting the rule of aggregation of sentences proposed by the petitioners would be tantamount to forcing a judge to cite and sentence a defendant immediately upon the occurrence of a contemptuous action when passions are at their most extreme. Such a rule would not be in the interests of justice.

The Commonwealth recognizes that a lower court might escape the effect of the rule by trying each contempt citation separately. Such would be a wasteful procedure, however, both in terms of the judge's time and the expense involved in separate trials.

Some courts would seem to distinguish aggregation of sentences for a required jury trial where several "petty" offenses arise out of the "same setting".[5] However, the Commonwealth would submit that the instant case reveals several separate and distinct acts of contempt on the part of the petitioners occurring during a trial lasting twenty-two days. An examination of the citations involved shows that the several separate contemptuous acts took place on various dates throughout the trial (App. 30-34). The Commonwealth is unable to characterize the contempts by the petitioners in the instant case as one continuing course

[5] *State v. Owens*, 54 N.J. 153, 254 A.2d 97 (1969) *cert. denied* 396 U.S. 1021 (1970). In *Owens*, where several assault and battery charges arose out of a single event (police officers responding to a domestic disturbance) the New Jersey Court found a jury trial "relevent." In *United States v. Potvin*, 481 F.2d 380 (10th Cir. 1973) the defendants were charged with two petty offenses arising out of their act of building a lean-to and tepees on the lands of the United States without a permit and cutting trees for that purpose. In aggregating the possible sentence and determining whether the defendants therefore had a right to a jury trial, the court based its decision on the fact that the offenses arose "out of the same act, transaction, or occurrence" 481 F.2d at 382.

of behavior as the Seventh Circuit was able to characterize the conduct involved in *Seale*.[6]

Petitioners' contention that contempt offenses arising from the same trial must be treated as one continuous offense is not persuasive. When a judge cites a defendant during trial, he is making a finding of fact that the defendant's actions constitute contempt of court. The only remaining determination to be made is the appropriate sentence to be imposed for each offense. The mere fact that a judge reserves sentencing until the end of trial should not logically change the fact that each contempt is a separate and distinct offense.

The Commonwealth would agree with those commentators who have examined the decision in *Seale* and found it faulty in that the basic premise upon which the aggregation rule is laid is inconsistent with the American concept of the judiciary and right of appellate review.[7] The *Seale* aggregation rule rationale seems to imply a presumption of abuse of the contempt power on the part of American trial judges and a further inability on the part of appellate courts to discover and correct abuses of sentencing.[8] The Commonwealth would assert that although a single test for determining separability of offenses is impossible due to the multitude of possible variations in conduct, appellate courts are often called upon to review alleged abuses of discretion and questions of factual separability regarding contemptuous conduct is equally conducive to appellate review.[9]

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[6] 461 F.2d at 354, n. 12.

[7] Thompson and Starkman, *Multiple Petty Contempts and the Guarantee of Trial By Jury*, 61 Geo. L.J. 621, 649-650 (1973).

[8] *Id.* at 650.

[9] *Id.* at 650.

Further, the distinction drawn by the court in *In re Chase, supra,* regarding possible transformation of a continuous act into a series of separate contempts will require the very appellate review of separability of acts that the court sought to eliminate in its own decision in *United States v. Seale, supra.* Thus if the appellate courts are presumed to be capable of examining a record to determine whether the trial judge converted a single act into a series of contempts by his actions during trial, they would seem equally capable of examining post-trial proceedings.[10]

Also of note in the *Seale* rationale is the possibility of incongruous results depending upon whether the contemnor is attorney or client. The Commonwealth therefore submits that consistent results can only be obtained in contempt cases by eliminating the aggregation rule altogether in light of the strong need for a trial court to be able to proceed immediately on direct criminal contempts in its presence.[11] See *Illinois v. Allen,* 397 U.S. 337, 344 (1970).

For the above-stated reasons the Commonwealth would submit that the aggregation rule as proposed by the petitioner and the Court in *United States v. Seale, supra,* is not constitutionally required and therefore the petitioners were not denied due process of law when they were sentenced on several distinct criminal contempts in a non-jury post-trial proceeding.

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[10] *Id.* at 651.

[11] *Id.* at 652.

II. The strong possibility of a substantial term of imprisonment does not require that an accused be afforded the right to a jury trial.

Petitioner argues that *Baldwin v. New York, supra* is dispositive of this issue. *Baldwin* addressed itself to resolving the dichotomy between "petty" and "serious" offenses for purposes of the Sixth Amendment, right to jury trial provision. This Court specifically concluded "no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment *for more than six months is authorized.*"[12] (Emphasis added) In ordinary criminal prosecution, the severity of the penalty authorized was the standard used to determine the "seriousness" of the offense. *Duncan v. Louisiana, supra; Frank v. United States, supra.* Thus, *Baldwin* served as a further refinement to this troublesome problem.

The Commonwealth submits that *Baldwin* was not intended to reach the situation wherein no statutory penalty for an offense was proscribed. In this situation, the criterion upon which the classification depended, remained unchanged. Courts, including those of Pennsylvania, continued to look to the severity of a penalty actually imposed.[13] *Cheff v. Schnackenberg, supra; Bloom v. Illinois, supra; Frank v. United States, supra.* Thus, the Commonwealth contends that *Baldwin* is distinguishable from the instant facts and is not responsive to the issue now before the Court.

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[12] 399 U.S. at 69.

[13] *Weiss v. Superior Court, supra; State v. Dostal,* 28 Ohio St. 2d 158, 277 N.E. 2d 211 (1971), *cert. denied,* 406 U.S. 831 (1972); *Roselle v. Oklahoma,* 503 P.2d 1293 (1972); *McGowan v. Mississippi,* 258 So. 2d 801, *cert. denied,* 409 U.S. 1006 (1972); *Commonwealth v. Snyder, supra;* Contra, *Sarich v. Havercamp,* 203 N.W. 2d 260 (1972); *Alaska v. Browder,* 486 P.2d 925 (1971).

Indeed, there also appears to be some question as to the applicability, if any, of Baldwin to the direct criminal contempt situation.[14]

The Commonwealth further raises for your Honorable Court's consideration the question of whether *Baldwin* should be applied retroactively to the instant case. The Commonwealth relies upon the rationale of *Jenkins v. Delaware*, 395 U.S. 213 (1969). There the petitioner was originally tried on January 13, 1966. At trial, an incriminating statement of the petitioner was admitted into evidence. While this case was on appeal, *Johnson v. New Jersey*, 384 U.S. 719 (1966) and *Miranda v. Arizona*, 384 U.S. 436 (1966) were decided. The Delaware Supreme Court reversed the conviction on various state grounds and also determined that under *Johnson*, petitioner's statement which was obtained without advising him of his constitutional rights, would be admissible at his retrial. The rationale was that a retrial is not the "commencement" of a case but is a mere "continuation" of the case originally commenced. Your Honorable Court affirmed. In the instant case, the original trial took place in December 1966 and the Supreme Court of Pennsylvania rejected petitioner's claim as to right to trial by jury on the basis of *DeStefano v. Woods*, 392, U.S. 631 (1968) which held that *Duncan* and *Bloom* are prospective only, 434 Pa. 478, 255 A.2d 131 (1969); in *Mayberry v. Pennsylvania, supra*, this Court reversed on grounds unrelated to *Baldwin* and remanded so that "another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, sits in judgment on the conduct of petitioner as shown by the record." The Commonwealth contends that the proceedings pursuant to the order were a

[14] *State v. Dostal, supra; Commonwealth v. Snyder, supra.*

"continuation" of the original case rather than an entirely new, separate and distinct trial; the proceedings constituted a "resentencing" of the petitioner and not a new adjudication of guilt. With this view of non-retroactivity for *Baldwin*,[15] it would then be consistent with the holding in *DeStefano, supra.*

Whether the courts may adjudicate criminal contempt cases without a jury trial has been a recurring question. The history surrounding this problem need not be set forth herein. The Pennsylvania statute authorizing imprisonment for contempt does not provide a limitation on the length of imprisonment which may be imposed. Act of 1836, June 16, P.L. 784 § 23, 24, 17 P.S. § 2041, 2042.[16] In

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[15] Courts confronted with this issue have found the decision to so affect the administration of justice to require non-retroactive application. *United States ex rel. Farmer v. Kosan,* 440 F.2d 1256 (2d Cir. 1971); *People v. Dargan,* 26 N.Y. 2d 100, 261 N.E. 2d 633, 313 N.Y.S. 2d 712 (1970); *State v. Dostal, supra.* However, in *Commonwealth v. Bethea,* 445 Pa. 161, 282 A.2d 246 (1971), the Pennsylvania Supreme Court with two judges filing concurring and dissenting opinions and one judge not participating, decided without explanation that *Baldwin* was retroactive. The dissenting opinions echo the views of the aforementioned cases. The Commonwealth views the majority opinion as patently erroneous.

[16] CLASSIFICATION OF PENAL CONTEMPTS.

The power of the several courts of this Commonwealth to issue attachments and to inflict summary punishments for contempts of court shall be restricted to the following cases, to-wit:

I. To the official misconduct of the officers of such courts respectively;

II. To disobedience or neglect by officers, parties, jurors, or witnesses of or to the lawful process of the court;

III. To the misbehavior of any person in the presence of the court, thereby obstructing the administration of justice. 1836, June 16, P.L. 784, § 23.

PUNISHMENT FOR CONTEMPT.

The punishment of imprisonment for contempt as aforesaid shall extend only to such contempts as shall be committed in open court, and all other contempts shall be punished by fine only. 1836, June 16, P.L. 784, § 24. See *Duncan v. Louisiana, supra,* N. 35 at 162. *Frank v. United States, supra.*

this instance, the generally accepted test is to look to the severity of penalty actually imposed and sentences in excess of six months may not be given without the imposition of a jury trial or waiver thereof. *Cheff, supra; Bloom, supra.* However, both of these cases involved indirect criminal contempt and disputed issues of fact necessitated extended hearings.[17] The instant case presents the classic form of direct criminal contempt. Nevertheless, the Commonwealth urges that the principles of *Cheff* and *Bloom* be applied to the instant case as has been done on the State level.[18] Thus, though the statute in question is open ended in terms of potential punishment, in a practical sense, an accused cannot receive a sentence in excess of six months without a jury trial. The Commonwealth concedes that had the petitioner been given a sentence in excess of six months, a jury trial would have been required. The Commonwealth equates the phrase "substantial term of imprisonment" to a period in excess of six months thereby preserving the distinctions between "petty" and "serious" offenses this Court made in *Baldwin* with respect to ordinary crimes. If an accused faces a lengthy term of imprisonment, something in excess of six months, under the statute in question, it is not because the statute lacks a maximum proscribed sentence but because the trial judge or appellate court upon review deems the contumacious conduct as serious. To interpose the requirement of a jury trial simply because the statute is open ended as to punishment would destroy the fundamental nature of a

[17] *Cheff* failed to obey an order by an appellate court directing compliance with a cease and desist order of the Federal Trade Commission; *Bloom* was convicted on centempt for willfully petitioning to probate a fraudulently prepared and executed will.

[18] *Commonwealth v. Snyder, supra; Commonwealth v. Patterson,* 452 Pa. 457, 308 A.2d 90, 93 n. 3 (1973).

contempt proceeding.[19] The contempt offense would take on the character of an ordinary crime with its attendant purpose of punishing past wrongful conduct. Contempt must remain a tool to be used to maintain courtroom decorum. Whether a trial judge cites a contemnor at the time of the occurrence or waits until the end of trial must be determined on a case-by-case basis. In the instant case, it should be pointed out that the petitioner acted as his own counsel and the trial judge may very well have concluded that to have cited and sentenced as the contempts occurred would have had the effect of prejudicing the case in chief. On the facts of this case, the trial judge may not have had any other alternative than cite for contempt at the conclusion of the trial. Naturally, the benefits of *Illinois v. Allen*, 397 U.S. 337 (1970) were not available.

Mr. Justice White, speaking for the court in *Bloom*, expressed considerable apprehension about the unbridled power to punish summarily for contempt. The Commonwealth submits that while these fears were viable prior to *Bloom*, subsequent decisions have arrested them. *Illinois v. Allen, supra*, provides vital options for the trial judge to employ during the course of trial. *Mayberry* provides protection to defendants in cases of severe villification who may be cited at the end of trial. Moreover, matters of "discreteness" or abuse are properly reviewable before the appellant courts. *Yates v. United States*, 355 U.S. 66 (1957) demonstrates that reviewing courts will not tolerate "caprice" in dealing with contempts. Thus, in the

[19] See Thompson and Starkman, *Multiple Contempts and the Guarantees of Trial by Jury, supra*, at 631-635 for discussion of the practical difficulties inherent in having a jury trial on direct criminal contempt.

light of such safeguards, further limitation to the contempt power is unnecessary and unwarranted.

For the foregoing reasons, the Commonwealth respectfully urges the Court to deny the relief requested.

Conclusion

WHEREFORE, for the above-stated reasons, respondent respectfully requests that the relief requested be denied.

Respectfully submitted,

ROBERT W. DUGGAN,
District Attorney of Allegheny County,
Attorney for Respondent.

ROBERT L. EBERHARDT,
Assistant District Attorney, *of Counsel.*

SUPREME COURT OF THE UNITED STATES

Syllabus

CODISPOTI ET AL. *v.* PENNSYLVANIA

CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

No. 73–5615. Argued March 25, 1974—Decided June 26, 1974

Petitioners, Codispoti and Langnes, were tried before a judge in separate proceedings for contemptuous conduct that allegedly occurred during the course of their criminal trial before another judge, and were found guilty on each of several separate charges. The judge in the contempt proceedings, who refused petitioners' request for a jury trial, imposed consecutive sentences, Codispoti receiving six months for each of six contempts and three months for the seventh (aggregating over three years), and Langnes six months for each of five contempts and two months for the sixth (aggregating close to three years). The Pennsylvania Supreme Court affirmed. This Court granted certiorari limited to questions raising the issue whether petitioners should have been afforded a jury trial. *Held:*

1. Though a crime carrying more than a six-month sentence is a serious offense triable by jury, *Frank* v. *United States*, 395 U. S. 147, *Baldwin* v. *New York*, 399 U. S. 566, an alleged contemnor is not entitled to a jury trial whenever a strong possibility exists that upon conviction he will face a substantial term of imprisonment regardless of the punishment actually imposed. See *Taylor* v. *Hayes, ante*, p. 1. P. 6.

2. In the case of post-verdict adjudications of various acts of contempt committed during trial, the Sixth Amendment requires a jury trial if the sentences imposed aggregate more than six months, even though no sentence for more than six months was imposed for any one act of contempt. Pp. 9–11.

453 Pa. 619, 306 A. 2d 294, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, and POWELL, JJ., and in Parts I and III of which MARSHALL, J., joined. MARSHALL, J., filed a concurring opinion. BLACKMUN, J., filed a dissenting opinion, in which BURGER, C. J., and STEWART and REHNQUIST, JJ., joined. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., joined.

SUPREME COURT OF THE UNITED STATES

No. 73-5615

Dominick Codispoti and Herbert Langnes, Petitioners, *v.* State of Pennsylvania.	On Writ of Certiorari to the Supreme Court of Pennsylvania for the Western District.

[June 26, 1974]

Mr. JUSTICE WHITE delivered the opinion of the Court.*

In December 1966, petitioners Dominick Codispoti and Herbert Langnes were codefendants with Richard Mayberry in a criminal trial ending in a verdict of guilty. Each acted as his own counsel, although legal advice was available from appointed counsel. At the conclusion of the trial, the judge pronounced Mayberry guilty of 11 contempts committed during trial and sentenced him to one to two years for each contempt. Codispoti was given like sentences for each of seven separate contempts. Langnes was sentenced to one to two years on each of six separate citations. Mayberry's total sentence was thus 11 to 22 years, Codispoti's seven to 14 years and Langnes' six to 12 years. The contempt convictions were affirmed by the Pennsylvania Supreme Court. This Court granted Mayberry's petition for certiorari, 397 U. S. 1020, and vacated the judgment of the Pennsylvania court, directing that "on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, [sit] in judgment on the conduct of petitioner as shown by the record." *Mayberry* v. *Pennsylvania*, 400 U. S. 455, 466 (1971).

*Part II of the opinion is joined only by MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE POWELL.

The contempt charges against Mayberry and petitioners were then retried in separate proceedings before another trial judge.[1] Codispoti's demand for a jury was denied. He also moved to subpoena witnesses "to prove that my acts did not disrupt the proceedings, and I intend to prove that my actions was [*sic*] not contemptuous,

[1] The seven contempts charged against Codispoti were:

"1. That while being tried by a jury before Albert A. Fiok, J. on November 18, 1966, he, the defendant, accused the court of trying to protect the prison authorities by saying, 'Are you trying to protect the prison authorities, Your Honor? Is that your reason?'

"2. That while on trial as aforesaid on November 29, 1966, he, the defendant, accused the court of kowtowing and railroading the defendant into life imprisonment by saying '. . . it is only because the defendants in this case will not sit still and be kowtowed and be railroaded into a life imprisonment.'

"3. That while on trial as aforesaid on November 30, 1966, he, the defendant, called the judge 'Caesar' and accused the court of misconduct by saying, 'You're trying to railroad us.' and '. . . I have never come across such a tyrannical display of corruption in my life.'

"4. That while on trial as aforesaid on December 1, 1966, he, the defendant, addressed the Court in an insolent and derogatory manner by saying, 'Are you going to tell me my codefendant is not crazy? You must be crazy to try me with him.'

"5. That while on trial as aforesaid on December 2, 1966, he, the defendant, accused the Court of criminal conspiracy between it and prison officials by saying, 'I further intend to prove there is a conspiracy between the prison authorities and this Court.'

"6. That while on trial as aforesaid on December 8, 1966, he, the defendant, created a despicable scene and refused to continue with the calling of his witnesses unless the Court ordered a mistrial, and in general creating an uproar, such an uproar as to cause the termination of the trial.

"7. That while on trial as aforesaid on December 8, 1966, he, the defendant, by constant and boisterous and insolent conduct interrupted the Court in its attempts to charge the jury, thereby creating an atmosphere of utter confusion and chaos."

App., at 33–34.

that it was merely an answer to the provocation made by the presiding Judge." App., at 47. This motion was also denied, the court remarking that "this is an issue between the Court and you, and the record will speak for the Court, and you and counsel can speak for yourself." *Ibid.* The trial then proceeded, the State offering into evidence the relevant portions of the transcript of the 1966 criminal proceedings in the course of which the alleged contempts occurred. The State then rested. Codispoti neither testified nor called witnesses. The court found that he had committed the seven contemptuous acts as charged and sentenced him to six months in prison for each of six contempts and a term of three months for another, all of these sentences to run consecutively.

Petitioner Langnes' trial followed a very similar course.[2] He was found guilty of six separate contempts

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[2] The six contempts charged against Langnes were:

"1. That while being tried by a jury before Albert A. Fiok, J. on November 28, 1966, he, the defendant, accused the court of conspiracy by saying, 'For the record, before he begins again, I want the record to show this is another proof of conspiracy between this Court and institution.'

"2. That while on trial as aforesaid on November 29, 1966, he, the defendant, threatened to blow the trial judge's head off, by saying, "If I have to blow your head off, that's exactly what I'll do. I don't give a damn if its on the record or not. If I got to use force, I will. That's what the hell I'm going to do.'

"3. That while on trial as aforesaid on December 1, 1966, he, the defendant, accused and threatened the court by saying, 'Like I told you, you force this trial on me—you going to give me an illegal trial, I told you before what I was going to do to you, and I mean it. Now I refuse to go on with this trial if you are going to railroad me and badger my witnesses, force me to an unfair trial, that is exactly what I am going to do, punk. I'm going to blow your head off. You understand that?'

"4. That while on trial as aforesaid on December 5, 1966, he, the defendant, told the court to 'Go to hell.' and accused the court of misconduct by saying, 'One reason, you obviously have gotten in

and sentenced to five terms of six months each and one term of two months, all to be served consecutively.

The trial court filed an opinion stating that "the only points at issue are the validity of the sentences. The question of guilt of contemptuous conduct has been confirmed by both the Supreme Court of Pennsylvania . . . and by the U. S. Supreme Court . . . , therefore testimony at this hearing was limited to the record." App., at 35. The Court also held that petitioners were not entitled to a jury trial

> "because the questions of guilt to which the juries' decisions would be limited had already been adjudicated adversely to the Defendants by two appellate courts. Furthermore, in the instant case no term of imprisonment in excess of six months was imposed for any one offense. The offenses for which

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contact with the local papers to sharpen the hatchet over the heads of the defendants accusing them of causing the taxpayers fifty grand which as a result gave this hearing a prejudicial atmosphere. I would like to state here for the record, and for the papers, if need be, it is not us that is costing the taxpayers money. It is you, Mr. Maroney, and the Commonwealth that is costing the taxpayers money.'

"5. That while on trial as aforesaid on December 5, 1966, he, the defendant, made scurrilous remarks to the court by saying, 'For the record, I would like to state that as far as my personal opinion is concerned, communist Russia, communist China, and Cuba need men like you. I think wherever you came from you infiltrated the courts and the whole place might as well be communist Russia.'

"6. That while on trial as aforesaid on December 9, 1966, he, the defendant, threatened the life of the court by saying, 'I object to what you did to my two codefendants and I swear on my mother's name that I will keep my promise to you, the two threats I made. Don't worry about me interrupting during your summation. I won't even dignify these stinking proceedings, punk, go to hell, and I will shake hands in hell with you. I will be damned to you.' Also, he, the defendant, said, 'You are a dead man, stone dead. Your Honor.'" App., at 30–31.

sentences were imposed occurred at different times and on different dates." *Id.*, at 36 (footnote omitted).

The Pennsylvania Supreme Court affirmed without opinion, one justice dissenting on the ground that petitioners were entitled to a jury trial. 453 Pa. 619, 306 A. 2d 294. We granted certiorari limited to those questions raising the issue whether petitioners should have been afforded a jury trial. 414 U. S. 1063 (1973).[3]

I

In *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), the Court held that the Fourteenth Amendment guaranteed to defendants in state criminal trials the right to jury trial provided in the Sixth Amendment. In a companion case, *Bloom* v. *Illinois*, 391 U. S. 194 (1968), the Court held that while petty contempts, like other petty crimes, could be tried without a jury, serious criminal contempts must be tried with a jury if the defendant insisted on this mode of trial. Although the judgment about the seriousness of the crime is normally heavily influenced by the penalty authorized by the legislature, the Court held that where no legislative penalty is specified and sentence is left to the discretion of the judge, as is often true in the case of criminal contempt, the pettiness or seriousness of the contempt will be judged by the penalty actually imposed. Finally, the Court recognized that

[3] The questions on which certiorari was granted were stated in the petition, as follows:

"1. Should petitioners receive cumulative sentences for contempt of court imposed at the end of a trial where the total effective sentence received must be used rather than the individual sentences in order to determine the seriousness of the contempt and thereby determine whether the accused should be afforded the right to a jury trial?

"2. Should the strong possibility of a substantial term of imprisonment require that an accused be afforded the right to a jury trial?"

sentences up to six months could be imposed for criminal contempt without guilt or innocence being determined by a jury, but a conviction for criminal contempt in a non-jury trial could not be sustained where the penalty imposed was 24 months in prison.

Since that time, our decisions have established a fixed dividing line between petty and serious offenses: those crimes carrying more than six months sentence are serious crimes and those carrying less are petty crimes. *Frank* v. *United States*, 395 U. S. 147, 149–150 (1969); *Baldwin* v. *New York*, 399 U. S. 66, 69 (1970).[4] Under these cases, we plainly cannot accept petitioners' argument that a contemnor is entitled to a jury trial whenever a strong possibility exists that he will face a substantial term of imprisonment upon conviction, regardless of the punishment actually imposed. See *Taylor* v. *Hayes*, *ante*. Our cases, however, do not expressly address petitioners' remaining argument that they were entitled to jury trials because the prison sentences imposed after post-trial convictions for contemptuous acts during trial were to be

[4] In tracing the lineage of the six-month dividing line for purposes of ascertaining whether a jury trial is required under the Sixth Amendment, the dissent implicitly questions the authenticity of this rule. Putting aside whether the "constitutional rule of *Bloom*" ever "evolved" into the present rule, it is sufficient to note that although only three Members of the Court explicitly embraced the six-month demarcation point in *Baldwin* v. *New York*, *supra*, Mr. Justice Black and MR. JUSTICE DOUGLAS concurred in the judgment. While reading the Sixth Amendment to require a jury trial for "all crimes," they expressed the view that imprisonment for more than six months would certainly necessitate a jury trial. Five Members of the Court out of the eight participating therefore agreed that, at the very least, the Sixth Amendment requires a jury trial in all criminal prosecutions where the term of imprisonment authorized by statute exceeds six months.

served consecutively and, although each was less than six months, aggregated to more than six months in jail.[5]

II

There are recurring situations where the trial judge, to maintain order in the courtroom and the integrity of the trial process in the face of an "actual obstruction of justice," *In re McConnell*, 370 U. S. 230, 236 (1962); see also *In re Little*, 404 U. S. 553, 555 (1972), convicts and sentences the accused or the attorneys for either side for various acts of contempt as they occur. Undoubtedly, where the necessity of circumstances war-

[5] My Brother REHNQUIST submits that petitioners are not entitled to a jury trial because they were originally tried and convicted of contempt in 1966, two years before this Court's decisions in *Duncan* v. *Louisiana* and *Bloom* v. *Illinois*, *supra*, which we held in *De Stefano* v. *Woods*, 392 U. S. 631 (1968), should receive only prospective application. The dissent finds further support for its conclusion in *Jenkins* v. *Delaware*, 395 U. S. 213 (1969), where the Court held that *Miranda* v. *Arizona*, 384 U. S. 436 (1966), did not apply to persons whose retrials had commenced after the date of the *Miranda* decision if their original trials had begun before that date. This view, however, represents a fundamental misreading of the reach of these decisions and their applicability to the peculiar circumstances of this case. *De Stefano* unmistakably stated that "we will not reverse state convictions *for failure to grant jury trial where trials began* prior to May 20, 1968, the date of this Court's decisions in *Duncan* v. *Louisiana* and *Bloom* v. *Illinois*." 392 U. S., at 635 (emphasis added). *De Stefano* did not exempt from the jury trial requirement trials beginning after that date, and here petitioners' convictions occurred in a trial that began over three and one-half years after the *Duncan* and *Bloom* decisions. The boundaries for the retroactive impact of *Duncan* and *Bloom* were advisedly established, for the jury trial requirement, by definition, relates to *trials*, not to uncorrectable police conduct which occurred prior to trial and which, if illegal, would preclude the use of perhaps critical evidence gathered in reliance on then existing law. *Jenkins* v. *Delaware* involved the latter considerations and has little bearing here.

rants, a contemnor may be summarily tried for an act of contempt during trial and punished by a term of no more than six months. Nor does the judge exhaust his power to convict and punish summarily whenever the punishment imposed for separate contemptuous acts during trial equals or exceeds six months. Cf. *United States* v. *Seale*, 461 F. 2d 345, 355 (CA7 1972).

Bloom v. *Illinois*, *supra*, recognized, as cases in this Court have consistently done, "the need to maintain order and a deliberative atmosphere in the courtroom. The power to quell disturbance cannot attend upon the impaneling of a jury." 391 U. S., at 210.

> "[A] criminal trial, in the constitutional sense, cannot take place where the courtroom is a bedlam. . . . A courtroom is a hallowed place where trials must proceed with dignity . . . ." *Illinois* v. *Allen*, 397 U. S. 337, 351 (1970) (DOUGLAS, J., separate opinion); see also Disorder in the Court: Report of the Association of the Bar of the City of New York, Special Committee on Courtroom Conduct 10–23 (1973); Burger, The Necessity for Civility, 52 F. R. D. 211, 214–215 (1971).
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> "To allow the disruptive activities of a defendant . . . to prevent his trial is to allow him to profit from his own wrong. The Constitution would protect none of us if it prevented the courts from acting to preserve the process that the Constitution itself prescribes." *Illinois* v. *Allen*, *supra*, 397 U. S., at 350 (BRENNAN, J., concurring).

More recently, in *Mayberry* v. *Pennsylvania*, *supra*, we again noted that a judge, when faced with the kind of conduct there at issue, "could, with propriety, have instantly acted, holding petitioner in contempt . . . ." 400 U. S., at 463. That the total punishment meted out during trial exceeds six months in jail or prison would

not invalidate any of the convictions or sentences, for each contempt has been dealt with as a discrete and separate matter at a different point during the trial.

III

When the trial judge, however, postpones until after trial the final conviction and punishment of the accused or his lawyer for several or many acts of contempt committed during the trial, there is no overriding necessity for instant action to preserve order and no justification for dispensing with the ordinary rudiments of due process. *Mayberry* v. *Pennsylvania, supra,* 404 U. S., at 463–464; *Groppi* v. *Leslie,* 404 U. S. 496, 499–507 (1971); *Taylor* v. *Hayes, ante,* at —. Moreover, it is normally the trial judge who, in retrospect, determines which and how many acts of contempt the citation will cover. It is also he or, as is the case here, another judge who will determine guilt or innocence absent a jury, who will impose the sentences and who will determine whether they will run consecutively or concurrently. In the context of the post-verdict adjudication of various acts of contempt, it appears to us that there is posed the very likelihood of arbitrary action that the requirement of jury trial was intended to avoid or alleviate. Cf. *Taylor* v. *Hayes, ante,* at —.

The jury trial guarantee reflects "a profound judgment about the way in which the law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government." *Duncan* v. *Louisiana, supra,* 391 U. S., at 155 (footnote omitted). The Sixth Amendment represents a "deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement . . . ." *Id.,* at 156. Moreover,

> "criminal contempt is a crime in every fundamental respect . . . . [I]n terms of those considerations

which make the right to jury trial fundamental in criminal cases, there is no substantial difference between serious criminal contempts and other serious crimes. Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court or to the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court." *Bloom* v. *Illinois*, *supra*, 391 U. S., at 201–202.

In the case before us, the original trial judge filed the contempt charges against these petitioners, while another judge tried them and imposed the sentences. Because the latter had the power to impose consecutive sentences, as he did here, guilt or innocence on the individual charges bore heavily on the ultimate sentence and was of critical importance. Here the contempts against each petitioner were tried seriatim in one proceeding, and the trial judge not only imposed a six months' sentence for each contempt but also determined that the individual sentences were to run consecutively rather than concurrently, a ruling which necessarily extended the prison term to be served beyond that allowable for a petty criminal offense. As a result of this single proceeding, Codispoti was sentenced to three years and three months for his seven contemptuous acts, Langnes to two years and eight months for his six contempts. In terms of the sentence imposed, which was obviously several times more than

six months, each contemnor was tried for what was equivalent to a serious offense and was entitled to a jury trial.

We find unavailing respondent's contrary argument that petitioners' contempts were separate offenses and that, because no more than a six months' sentence was imposed for any single offense, each contempt was necessarily a petty offense triable without a jury. Notwithstanding respondent's characterization of the proceeding, the salient fact remains that the contempts arose from a single trial, were charged by a single judge and were tried in a single proceeding. The individual sentences imposed were then aggregated, one sentence taking account of the others and not beginning until the immediately preceding sentence had expired.

Neither are we impressed with the contention that today's decision will provoke trial judges to punish summarily during trial rather than awaiting a calmer, more studied proceeding after trial and deliberating "in the cool reflection of subsequent events." *Yates* v. *United States*, 355 U. S. 66, 76 (1957) (footnote omitted). Summary convictions during trial that are unwarranted by the facts will not be invulnerable to appellate review. Cf. *Sacher* v. *United States*, 343 U. S. 1, 9, 13 (1952).[6]

Nor can we accept the trial court's view that the question of petitioners' guilt on the contempt charges had already been conclusively adjudicated in this Court. Our decision in *Mayberry* v. *Pennsylvania*, *supra*, although expressing strong condemnation of Mayberry's conduct, which we reaffirm, did not purport to affirm Mayberry's contempt conviction. On the contrary, the judgment

[6] "When constitutional rights turn on the resolution of a factual dispute we are duty-bound to make an independent examination of the evidence in the record. See, *e. g.*, *Edwards* v. *South Carolina*, 372 U. S. 229, 235; *Blackburn* v. *Alabama*, 361 U. S. 199, 205, n. 5." *Brookhart* v. *Janis*, 384 U. S. 1, 4 n. 4 (1966).

affirming the conviction was vacated and a new trial required before a different judge who was to sit "in judgment on the conduct of petitioner as shown by the record." 400 U. S., at 466.

The judgment of the Pennsylvania Supreme Court is reversed and the case remanded for further proceedings not inconsistent with this opinion.

So ordered.

SUPREME COURT OF THE UNITED STATES

No. 73-5615

Dominick Codispoti and Herbert Langnes, Petitioners, *v.* State of Pennsylvania.	On Writ of Certiorari to the Supreme Court of Pennsylvania for the Western District.

[June 26, 1974]

MR. JUSTICE MARSHALL, concurring.

I concur in the judgment of the Court, and in Parts I and III of the Court's opinion. However, I cannot join Part II of the Court's opinion, which suggests that the trial judge in a situation such as we have here could impose an unlimited number of separate, consecutive six-month sentences upon a defendant "for separate contemptuous acts during the trial," so long as the judge convicts and punishes summarily upon the occurrence of each contemptuous act. In my view, the Sixth Amendment right to jury trial would be equally applicable to this situation.

I

The Court's opinion observes that "[t]he Sixth Amendment represents a 'deep commitment of the Nation to the right to jury trial in serious criminal cases as a defense against arbitrary law enforcement.'" *Ante*, at 9, quoting *Duncan* v. *Louisiana*, 391 U. S. 145, 156 (1968). The opinion further recognizes that it is the trial judge who in a single proceeding acts as prosecutor, "determin[ing] which and how many acts of contempt the citation will cover"; as trier of fact, "determin[ing] guilt or innocence absent a jury"; and as judge, "impos[ing] the sentences and . . . determin[ing] whether they will run consecutively or concurrently." *Ante*, at 9. Thus, the Court

concludes, "there is posed the very likelihood of arbitrary action that the requirement of jury trial was intended to avoid or alleviate." *Ibid.* I agree. But I completely fail to see how there is any less likelihood of such arbitrary action by a judge when he acts summarily to punish each allegedly contemptuous act by a defendant as it occurs, rather than awaiting the end of trial to try the contempts. Indeed, the Court's suggestion provides an incentive for a trial judge to act in the heat of the moment, and thus encourages the very arbitrary action which it is the purpose of the Sixth Amendment to eliminate.

We have held that a six-month sentence is the constitutional dividing line between serious offenses for which trial by jury must be afforded and petty offenses, and that in contempt cases it is the sentence actually imposed rather than the penalty authorized by law which is determinative. Accordingly, the Court today holds that Codispoti and Langnes are constitutionally entitled to a jury trial because "[i]n terms of the sentence imposed, which was obviously several times more than six months, each contemnor was tried for what was equivalent to a serious offense." *Ante*, at 10–11. The Court rejects the State's argument that the individual contempts were separate offenses for Sixth Amendment purposes by pointing out that the contempts arose from a single trial, that they were charged by a single judge, and that the individual sentences were then aggregated. With all due respect, the same would be true if the judge had imposed summary punishment as the contemptuous acts occurred. Where the contemptuous acts arose out of a single course of conduct by the defendant, I think that they should be treated as a single serious offense for which the Sixth Amendment requires a jury trial, whether the judge seeks to use his summary contempt power in individual instances during trial or tries the contempts together at the end of

trial. See Disorder in the Court: Report of the Association of the Bar of the City of New York, Special Committee on Courtroom Conduct, at 222–224 (1973).

The only justification advanced by the Court to support its position is the "overriding necessity for instant action to preserve order." *Ante*, at 9. But we rejected this very argument in *Bloom* v. *Illinois*, 391 U. S. 194, 209–210 (1968). There, too, it was suggested that an exception to the constitutional rule requiring jury trial in serious contempt cases should be made for contempts committed in the presence of the judge because of "the need to maintain order and a deliberative atmosphere in the courtroom." Although we acknowledged that there was a "strong temptation" to do so, we held that the need to maintain order was not sufficient to justify an exception to the constitutional requirement.

II

Equally important, I am convinced that there is no "overriding necessity" for repeated use of the summary contempt power against a criminal defendant to maintain order in the courtroom. No clearer statement of the problem of courtroom disorder and its solution can be found than Mr. Justice Black's statement in *Illinois* v. *Allen*, 397 U. S. 337, 343 (1970):

> "It is essential to the proper admininstration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be

> best in all situations. We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly."

The Court in *Allen* set out three alternative ways of dealing with courtroom disorder. The Court today singles out one of these three alternatives, and holds that seriatim judge-imposed six-month sentences may be used to maintain order and a deliberative atmosphere in the courtroom because of the necessity for this remedy. There is nothing in *Allen*, however, which approves a succession of judge-imposed six-month contempt citations in one trial, and I have been unable to find any of our cases giving such specific authorization. This is too big a step to take where such a positive declaration of law is not necessary for the decision of the case at hand.

The availability of the other remedies set forth in *Allen* is persuasive proof that courtroom disorder can be effectively dealt with without the use of repeated summary contempts resulting in lengthy jail terms. See Disorder in the Court, *supra*, at 235. Indeed, repeated contempt citations are probably the least effective way to deal with the problem. The very fact that a series of contempt citations has failed to check the defendant's contemptuous acts and restore a deliberative atmosphere in the courtroom itself demonstrates that another citation is unlikely to do so. Either of the other two alternatives set forth in *Allen* would correct rather than prolong the disruptions of an orderly trial. Rather than permit the use of repeated contempt citations resulting in a sentence of over six months, *Allen* suggests that after an initial warning, see 397 U. S., at 350 (BRENNAN, J., concur-

ring), the next disruption could be punished with a contempt citation and a six-month sentence, plus a firm warning that any further disruption will be followed by binding or gagging the defendant or removing him from the courtroom until he promises to conduct himself properly. This approach would be more effective in maintaining that "dignity, order and decorum" of which Mr. Justice Black spoke in *Allen* than successive contempt citations after future disruptions, without running afoul of the Sixth Amendment's right to jury trial.

SUPREME COURT OF THE UNITED STATES

No. 73-5615

Dominick Codispoti and Herbert Langnes, Petitioners, *v.* State of Pennsylvania.	On Writ of Certiorari to the Supreme Court of Pennsylvania for the Western District.

[June 26, 1974]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST join, dissenting.

In *Bloom* v. *Illinois*, 391 U. S. 194 (1968), this Court established a constitutional right to a jury trial of a charge for a criminal contempt where the penalty imposed exceeded six months. There the contempt consisted of a lawyer's filing a spurious will for probate. It was not a direct contempt in open court. Where, as in *Bloom*, the criminal contempt takes place outside the presence of the court, there is little to distinguish the contempt, for purposes of using a jury as the fact finder, from the run-of-the-mill criminal offense. In this respect, the result in *Bloom* was a logical one.

In the present case, however, the contempt took place in open court and the incident and all its details are fully preserved on the trial record. The Court's opinion does not specify and leaves unclear what facts, if any, remain to be determined. I am at a loss, therefore, to see the role a jury is to perform. The perceived need to remove the case from the contemned judge is fully served by assigning the case to a different judge. See *Taylor* v. *Hayes, ante; Mayberry* v. *Pennsylvania*, 400 U. S. 455 (1971). And, as MR. JUSTICE REHNQUIST points out, since the new judge, not the jury, will impose the sentence, there is nothing the jury can do by way of mitigating an excessive punishment.

The determination of whether basically undisputed facts constitute a direct criminal contempt is a particularly inappropriate task for the jury. Before today, this determination has always been the exclusive province of the court, not the jury, and never before has this Court required a jury trial in a case involving a direct contempt.* Since I believe, as a practical matter, that there is no function for a jury to serve in a case such as this, I do not join the Court's extension of *Bloom* to include direct, in-court contempts. I, therefore, respectfully dissent.

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*In *Bloom*, 391 U. S., at 210, the Court acknowledged "a strong temptation to make exception to the rule we establish today for disorders in the courtroom." Although wholly unnecessary to its decision, the Court there resisted that temptation and declined to recognize the exception. In my opinion, the result in *Bloom*, an out-of-court contempt, does not lead inevitably to the result reached today in Codispoti's case, and I decline to follow *Bloom*'s dictum that carries the contrary implication.

SUPREME COURT OF THE UNITED STATES

Nos. 73–5615 AND 73–473

Dominick Codispoti and Herbert Langnes, Petitioners, 73–5615 *v.* State of Pennsylvania.	On Writ of Certiorari to the Supreme Court of Pennsylvania for the Western District.
Daniel T. Taylor, III, Petitioner, 73–473 *v.* John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division.	On Writ of Certiorari to the Court of Appeals of Kentucky.

[June 26, 1974]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins as to Part II, dissenting.

These two cases are graphic illustrations of the manner in which constitutional limitations on the power of a trial judge to summarily punish for contempt have been fashioned virtually out of whole cloth by this Court in the course of only 20-odd years. In *Sacher* v. *United States*, 343 U. S. 1 (1952), the Court, speaking through Mr. Justice Jackson, said:

> "Summary punishment always, and rightly, is regarded with disfavor and, if imposed in passion or pettiness, brings discredit to a court as certainly as the conduct it penalizes. But the very practical reasons which have led every system of law to vest a contempt power in one who presides over judicial proceedings also are the reasons which account for it being made summary. . . . The rights and immunities of accused persons would be exposed to serious

and obvious abuse if the trial bench did not possess and frequently exert power to curb prejudicial and excessive zeal of prosecutors. The interests of society in the preservation courtroom control by the judges are no more to be frustrated through unchecked improprieties by defenders." 343 U. S., at 8.

The Court's decisions today are the culmination of a recent trend of constitutional innovation which virtually emasculates this historic power of a trial judge. If the Court's holdings in this area were the product of any new historical insight into the meaning of the Fourteenth Amendment, or if indeed they could be regarded as a desirable progression towards a reign of light and law, even though of dubious constitutional ancestry, there would be less occasion for concern. But from the hodgepodge of legal doctrine embodied in these decisions, which have irretrievably blended together constitutional guarantees of jury trial in criminal cases, constitutional guarantees of impartial judges, and fragments of the law of contempt in federal courts, the only consistent thread which emerges is this Court's inveterate propensity to second-guess the trial judge.

I

In *Taylor* v. *Hayes*, the Court holds, squarely contrary to the holding in *Sacher*, *supra*, that the respondent trial judge was not entitled to proceed summarily against petitioner, even though all of the conduct in question occurred in the presence of respondent. The Court apparently concludes that since respondent did not sentence petitioner until after the proceedings at issue were completed, and at that point refused to permit petitioner to respond, petitioner's due process rights were violated. This conclusion is completely at odds with *Sacher*.

That case involved the contempt convictions of various defense counsel as an aftermath of the trial of various Communist Party leaders on charges of violating the Smith Act. Upon receiving the guilty verdict, Judge Medina of the Southern District of New York at once filed a certificate under Rule 42 (a) of the Federal Rules of Criminal Procedure, finding various defense counsel, including one defendant who had represented himself, guilty of contempt. Fed. Rule Crim. Proc. 42 (a) provided then, as it does now, that "[a] criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record." The contemnors argued that since Judge Medina had waited until the end of the trial to sentence them, the power of summary punishment for direct contempts under Rule 42 (a) had expired, and the provisions of Rule 42 (b) requiring notice and hearing became applicable. This Court in *Sacher* rejected that contention.

> "The Rule in question contemplates that occasions may arise when the trial judge must immediately arrest any conduct of such nature that its continuance would break up a trial, so it gives him power to do so summarily. But the petitioners here contend that the Rule not only permits but requires its instant exercise, so that once the emergency has been survived punishment may no longer be summary but can only be administered by the alternative method allowed by Rule 42 (b). We think 'summary' as used in this Rule does not refer to the timing of the action with reference to the offense but refers to a procedure which dispenses with the formality, delay and digression that would result from the issu-

> ance of process, service of complaint and answer, holding hearings, taking evidence, listening to arguments, awaiting briefs, submission of findings, and all that goes with a conventional court trial. The purpose of that procedure is to inform the court of events not within its own knowledge. The Rule allows summary procedure only as to offenses within the knowledge of the judge because they occurred in his presence.
>
> ". . . To summon a lawyer before the bench and pronounce him guilty of contempt is not unlikely to prejudice his client. It might be done out of the presence of the jury, but we have held that a contempt judgment must be public. Only the naive and inexperienced would assume that news of such action will not reach the jurors. If the court were required also then to pronounce sentence, a construction quite as consistent with the text of the Rule as petitioners' present contention, it would add to the prejudice. . . ." 343 U. S., at 9–10.

At no point did the Court in *Sacher* suggest that the procedures set forth in Rule 42 (a) were subject to any constitutional infirmity. Yet by the decision in *Taylor* v. *Hayes*, the Court has now held that procedures upheld within the unitary confines of the federal court system only two decades ago may not now be constitutionally employed by a State. The decision in *Taylor* will surely come as something of a shock to federal judges who must now decide whether they may constitutionally utilize the provisions of Fed. Rule Crim. Proc. 42 (a) in punishing direct contempts.

Our prior decisions have continuously adhered to the view that "[w]here the contempt is committed directly under the eye or within the view of the court, it may 'proceed upon its knowledge of the facts and punish the

offender, without further proof, and without issue or trial in any form.'" *In re Savin*, 131 U. S. 267, 277 (1889), quoting *Ex parte Terry*, 128 U. S. 289, 309 (1888). See *Cooke* v. *United States*, 267 U. S. 517, 535 (1925); *Fisher* v. *Pace*, 336 U. S. 155, 159–160 (1949).[1] It is only when the contempt is not a direct one, *i. e.*, observed by the judge himself, that the power to proceed summarily becomes subject to some qualification. *In re Oliver*, 333 U. S. 257, 274–276 (1948).

Groppi v. *Leslie*, 404 U. S. 496 (1972), relied upon by the Court, was a wholly different case than *Taylor*. In *Groppi*, the Assembly of the Wisconsin Legislature passed a resolution citing the petitioner there for contempt of that body, which had allegedly occurred two days previously. This Court reversed that conviction because petitioner had not been afforded adequate notice and hearing. The Court in *Groppi* noted that *Sacher* was a different case because it involved courtroom contempts by lawyers, with repeated warnings by the judge, and an opportunity on their behalf to speak. *Taylor* is no

[1] See also the more than 50 cases cited in *United States* v. *Barnett*, 376 U. S. 681, 694 n. 12 (1964).

The Court in *Ex parte Terry*, 128 U. S. 289 (1888), stated:

"We have seen that it is a settled doctrine in the jurisprudence both of England and of this country, never supposed to be in conflict with the liberty of the citizen, that for direct contempts committed in the face of the court, at least one of superior jurisdiction, the offender may, in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof than its actual knowledge of what occurred; and that, according to an unbroken chain of authorities, reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them." *Id.*, at 313. See also *Cooke* v. *United States*, 267 U. S. 517, 534 (1925).

different than *Sacher;* respondent judge repeatedly warned petitioner of his contemptuous conduct, and when he informed petitioner that he was in contempt permitted petitioner an opportunity to speak. Indeed, the Court in *Taylor* indicates that it agrees with the Kentucky Court of Appeals that "[t]he contempt citations and sentences coming at the end of the trial were not and could not have been a surprise to Taylor, because upon each occasion and immediately following the charged act of contempt the court informed Taylor that he was at that time in contempt of court." *Taylor* v. *Hayes, ante,* at 8, quoting 494 S. W. 2d, at 741–742.

Even were I in agreement with the Court's conclusion that Taylor's contempt conviction should be reversed, I nevertheless could not join in the holding that if petitioner is to be tried again, he may not be tried by respondent. While conceding that petitioner's conduct did not constitute the kind of personal attack on respondent that would prevent the latter from maintaining the calm detachment necessary for fair adjudication, *Mayberry* v. *Pennsylvania,* 400 U. S. 455 (1971), the Court holds that "it appears to us that respondent did become embroiled in a running controversy with petitioner." *Taylor* v. *Hayes, ante,* at 12. This portion of the Court's holding can only be described as a total repudiation of the principle laid down in *Sacher:*

> "A construction of the Rule is advocated which would deny a judge power summarily to punish a contempt that is personal to himself except, perhaps, at a moment when it is necessary to forestall abortion of the trial. His only recourse, it is said, is to become an accuser or complaining witness in a proceeding before another judge.
>
> "The rule itself expresses no such limitation, and the contrary inference is almost inescapable. *It is*

> ***almost inevitable that any contempt of a court committed in the presence of the judge during a trial will be an offense against his dignity and authority.*** At a trial the court is so much the judge and the judge so much the court that the two terms are used interchangeably in countless opinions in this Court and generally in the literature of the law, and contempt of the one is contempt of the other. ***It cannot be that summary punishment is only for such minor contempts as leave the judge indifferent and may be evaded by adding hectoring, abusive and defiant conduct towards judge as an individual. Such an interpretation would nullify, in practice, the power it purports to grant.*** 343 U. S., at 11–12 (emphasis added).

The Court in *Sacher* was interpreting the language of Fed. Rule Crim. Proc. 42, and, without the slightest suggestion that there might be constitutional infirmities in such procedures, refused to require retrial of the contemnors there before a different judge. Twelve years later, in a state case, *Ungar* v. *Sarafite*, 376 U. S. 575 (1964), the Court reaffirmed the principles of *Sacher*, in the face of an argument that the Constitution required something different. The Court in *Ungar* indicated that it was "unwilling to bottom a constitutional rule of disqualification solely upon . . . disobedience to court orders and criticism of its rulings during the course of a trial. . . . We cannot assume that judges are so irascible and sensitive that they cannot fairly and impartially deal with resistance to their authority or with highly charged arguments about the soundness of their decisions." 376 U. S., at 584.

Taylor is not a federal case, where this Court may, in the exercise of some perceived wisdom of the appropriate policy to be followed in the administration of justice in

the federal courts, see *Offutt* v. *United States*, 348 U. S. 11 (1954); *Cooke* v. *United States*, 267 U. S. 517 (1925), require retrial before another judge. By holding in *Taylor* that the respondent judge should be disqualified from trying petitioner's contempt, the Court has now adopted the very constitutional rule it disavowed in *Ungar* v. *Sarafite*, *supra*, and found not even worthy of mention in *Sacher*. In *Mayberry* v. *Pennsylvania*, *supra*, a case in which the defendant's conduct was so extraordinary that even the Court apparently concedes affords no precedent for today's decision in *Taylor*, the Court was at pains to state that "[a] judge cannot be driven out of a case." 400 U. S., at 463. Yet the teaching of *Mayberry*, and of today's decision in *Taylor*, is precisely the opposite: a judge *can* be driven out of a case by any counsel sufficiently astute to read the new-found constitutional principles enunciated in these decisions. Whether as a matter of policy the added procedural right conferred upon contemptuous lawyers are worth the sacrifice of the historic authority of the trial judge to control proceedings in his court may be open to debate, the total absence of any basis in the Fourteenth Amendment for the result which the Court reaches in *Taylor* v. *Hayes*, is to me clear beyond any doubt. Accordingly, I dissent from the Court's reversal of the conviction in that case.[2]

II

The *Codispoti* litigation in this Court is worthy of a chapter in Charles Dickens' *Bleak House*. Codispoti and Langnes were codefendants with the petitioner in *Mayberry* v. *Pennsylvania*, 400 U. S. 455 (1971), on contempt charges in the Pennsylvania courts and were apparently beneficiaries of this Court's judgment of reversal in that

[2] I agree with the Court's conclusion that Taylor was not entitled to a jury trial on the contempt charges.

case.[3] The Court's concluding language in its opinion in that case was that "on remand another judge, not bearing the stain of these slanderous remarks and having the impersonal authority of the law [sit] in judgment on the conduct of petitioner as shown by the record." 400 U. S., at 466. Pennsylvania carried out this mandate to the letter, and, as the Court points out in its opinion, Codispoti and Langnes were tried before a different judge, and received on retrial substantially more lenient sentences than had been imposed in the first instance. Nonetheless, the Court in its *Codispoti* opinion today, without so much as batting an eye, now decides that these petitioners were entitled to a jury trial. If that were the case, and *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), and *Bloom* v. *Illinois*, 391 U. S. 194 (1968), each decided two years before *Mayberry*,

[3] These petitioners were originally convicted in 1966 of criminal contempt of a Pennsylvania state court. Their codefendant in those proceedings was Richard Mayberry, who was also convicted of contempt. From the affirmance of those convictions by the Supreme Court of Pennsylvania, 434 Pa. 478, 255 A. 2d 131 (1969), only Mayberry sought review in this Court. In *Mayberry* v. *Pennsylvania*, 400 U. S. 455 (1971), this Court reversed Mayberry's conviction and remanded for retrial before another Pennsylvania state court judge. Though the record in this Court is unclear how it came about, Pennsylvania somehow made both Codispoti and Langnes the beneficiaries of the remand in *Mayberry*. They were thus retried with Mayberry on newly filed charges of criminal contempt, before another judge; they were again convicted, and on subsequent appeals to the appellate courts of Pennsylvania, their convictions were affirmed. It is clear, however, that the reversal of Mayberry's conviction and remand to the Pennsylvania courts for retrial, was not intended by *this* Court to disturb the original convictions of Codispoti and Langnes, nor to award them a retrial in the Pennsylvania courts. Whether or not petitioners here may, without further trial, now be incarcerated pursuant to the sentences imposed in the first contempt trial and affirmed on appeal by the Pennsylvania courts is, presumably, a matter of Pennsylvania law.

require such a result, it would seem to have been appropriate to so indicate in *Mayberry*.

In holding that *Duncan* and *Bloom* require a jury trial for the petitioners in *Codispoti*, the Court does not sufficiently distinguish the analogous case of *Jenkins* v. *Delaware*, 395 U. S. 213 (1969), which at the very least strongly suggests that petitioners were not entitled to a jury trial upon their retrial for contempt. In *Jenkins*, the petitioner had been convicted in a state court of murder and burglary. During the pendency of his appeal in the Supreme Court of Delaware, this Court decided *Miranda* v. *Arizona*, 384 U. S. 436 (1966), and *Johnson* v. *New Jersey*, 384 U. S. 719 (1966), which held that the decision in *Miranda* "applies only to cases in which the *trial* began after the date of [the *Miranda*] decision. . . ." 384 U. S., at 721 (emphasis added). In reversing the petitioner's conviction on various state grounds, the Supreme Court of Delaware also determined, *sua sponte*, that under *Johnson* v. *New Jersey*, *supra*, a statement obtained from petitioner without fully advising him of his constitutional rights would be admissible at his retrial. Petitioner was retried and convicted of second degree murder, and the Supreme Court of Delaware again affirmed. This Court affirmed the conviction, rejecting petitioner's argument that the statement should have been excluded from evidence. We held that the *Miranda* standards do not apply to persons whose *retrials* have commenced after the date of that decision if their original trials had begun before that date.

Codispoti is a substantially similar case. Codispoti and Langnes were originally tried and convicted of criminal contempt in 1966. This Court did not decide *Duncan* v. *Louisiana*, 391 U. S. 145, and *Bloom* v. *Illinois*, 391 U. S. 194, until May 20, 1968. And in *De Stefano* v. *Woods*, 392 U. S. 631 (1968) (*per curiam*), the Court held that the decisions in *Duncan* and *Bloom* would not

retroactively apply to "trials [begun] prior to May 20, 1968." 392 U. S., at 635. Since the original trial of these petitioners began prior to the date of the decisions in *Duncan* and *Bloom*, under *De Stefano* they would not have been entitled to the benefit of those rulings at their original trials. And *Jenkins* v. *Delaware*, *supra*, certainly suggests that since petitioners' original trial began prior to the decisions in *Duncan* and *Bloom*, they should not receive the benefit of those cases upon their retrial. The Court's rejoinder is that *Duncan* and *Bloom* are different cases because they involve jury trials instead of "uncorrectable police conduct which occurred prior to the trial and which, if illegal, would preclude the use of perhaps critical evidence gathered in reliance on then existing law." But our decision in *Johnson* v. *New Jersey*, *supra*, that *Miranda* was to have only prospective application did not turn on when the police conduct at issue occurred, but instead on when the *trial of the defendant* occurred. The Court does not tell us why the retrial rule of *Jenkins* v. *Delaware*, *supra*, is not equally applicable to the jury trial requirements of *Duncan* and *Bloom*, which *De Stefano* says do not govern where the original *trial* began prior to the date of those decisions.

The Court's decision in *Bloom* v. *Illinois*, *supra*, marked a sharp departure from prior constitutional holdings under the Fourteenth Amendment. Even were it clear that petitioners were entitled to the benefit of *Bloom* on retrial, final acceptance of *Bloom*'s holding as governing *Codispoti* would first warrant examination as to its practical effects. Bloom, an attorney, was charged with contempt of a state court for having filed a spurious will for probate. *Bloom* was a classic case of "indirect contempt," one which occurred outside of the presence of the court, and Bloom was accorded a full trial before the court. Evidence was received tending to show that a third party had engaged Bloom to draw a will after

the death of the putative testator; Bloom was convicted of contempt by the court, and was sentenced to two years' imprisonment. Under Illinois law, no maximum punishment was provided for convictions for criminal contempt. This Court, relying on *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), held that where state law did not provide a maximum punishment for criminal contempt, the Fourteenth Amendment required that the penalty actually imposed on the contemnor be the constitutional indicator of the seriousness of the offense and the right of jury trial defined by *Duncan*. Since *Duncan* held that a prosecution for a crime with a maximum penalty of two years was one for a serious offense within the terms of the Sixth and Fourteenth Amendments, the Court held that Bloom was entitled to a jury trial on the contempt charges.

As the Court's opinion today in *Taylor* v. *Hayes*, *ante*, at 6–7, makes clear, the constitutional rule of *Bloom* has now evolved into a rule whereby a contemnor must be afforded a jury trial where either a penalty over six months is authorized by statute or where the penalty actually imposed exceeds six months. Presumably, the case law support for this conclusion is *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), and *Baldwin* v. *New York*, 399 U. S. 66 (1970), since we deal here not with a federal case, where this Court has in the exercise of supervisory authority over the administration of justice in the federal courts applied this six-month rule, see *Cheff* v. *Schnackenberg*, 384 U. S. 373 (1966), but with a state case where only the Constitution may dictate such a rule. *Duncan* v. *Louisiana*, *supra*, was a 7–2 opinion which held that where the crime for which a state court defendant was tried was punishable by a two-year sentence, the Fourteenth Amendment required the application of the Sixth Amendment guarantee of jury trial in serious criminal cases to state prosecutions. Mr. Justice Harlan, in dis-

sent, joined by MR. JUSTICE STEWART, forcefully argued that there was no indication that the drafters of the Fourteenth Amendment intended to make the Sixth Amendment applicable to the States. See Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding, 2 Stan. L. Rev. 5 (1949); Morrison, Does the Fourteenth Amendment Incorporate the Bill of Rights? The Judicial Interpretation, 2 Stan. L. Rev. 140 (1949). *Baldwin* v. *New York*, *supra*, of course, was a plurality opinion of three Members of this Court, which extended the constitutional jury trial rule of *Duncan* v. *Louisiana*, *supra*, to any state criminal offense where the penalty permitted was over six months. Mr. Justice Harlan, MR. CHIEF JUSTICE BURGER, and MR. JUSTICE STEWART dissented.

The Court in *Codispoti* woodenly applies this six-month rule to the facts of that case, without any regard to the significant differences between *Codispoti* and *Bloom*, and without regard to the import of its decision. In applying this six-month rule of dubious constitutional origin to consecutive sentences on counts of less than six months, it appears that the *Baldwin* plurality's proposition that six months is the constitutional *sine qua non* of the jury trial requirement under the Fourteenth Amendment now commands a majority of this Court almost *sub silentio* by passage of time rather than by force of reason.

Codispoti and Langnes were convicted on their retrial of various separate contemptuous acts, were sentenced for each act to terms of six months or less, with the direction that the sentences be served consecutively. The contemnor in *Bloom* was sentenced to two years for one contemptuous act. Bloom's contempt was an indirect one, and he was entitled under Illinois law to the normal rights of any trial defendant save only the right to a jury trial. By awarding him a constitutional right

to a jury trial, this Court in effect required that the fact-finding function be transferred from the judge to a jury. Whether right or wrong as a matter of constitutional law, the holding in *Bloom* was at least intelligible. But the contempts of Codispoti and Langnes were direct, committed in the presence of the trial judge. Upon retrial after our decision in *Mayberry, supra*, the case was tried before another Pennsylvania judge on the basis of the certificate of contempt filed by the judge who had presided at the original criminal trial of Mayberry, Codispoti, and Langnes. It does not appear that either Codispoti or Langnes seriously challenged the factual allegations in the certificate of contempt, and it would seem fair to surmise that this lack of factual dispute is typical of a trial based on a certificate of direct contempt.

The Court's opinion in *Bloom* spoke of the seriousness of an offense for which a sentence of more than six months was imposed, 391 U. S., at 196–197, and it might be thought from the Court's opinion in *Codispoti* today that the jury was in some way expected to mitigate the harshness of the punishment which could be visited upon a contemnor. But there is no indication whatever in the record before us that Pennsylvania law allocates any role in the sentencing of a criminal defendant to the jury. The jury presumably will hear evidence as to relatively undisputed facts, and if it returns a verdict of guilty a sentence will be imposed by a judge trying the case. If it is the length of sentence which is to be the controlling factor in determining whether a jury trial is to be awarded, and the severity of the possible sentence to be imposed by the judge which provides the constitutional basis for requiring a jury trial, the Court's application of *Bloom* to a direct contempt seems questionable for more than one reason. The guarantee of jury trial accorded to these petitioners in no way limits the sen-

tence which may be imposed by the trial judge in those cases where a guilty verdict is returned by the jury. The Court has succeeded only in requiring Pennsylvania to engraft onto its traditional procedures for adjudicating direct contempts a judicial "fifth wheel" without appreciably furthering the constitutional goals enunciated in *Duncan* v. *Louisiana, supra,* and *Bloom* v. *Illinois, supra.*

The application of *Bloom* to the consecutive sentences imposed for the separate contemptuous acts of Codispoti and Langnes is made even more questionable in light of the Court's concession that the result would be different in other fact situations. The Court indicates that a contemnor "may be summarily tried for an act of contempt during trial and punished by a term of no more than six months. . . . Nor does the judge exhaust his power to convict and punish summarily whenever the punishment imposed for separate contemptuous acts during the trial equals or exceeds six months." *Codispoti* v. *Pennsylvania, ante,* at 6–7. The upshot of this, of course, is that trial judges are surely to be inclined to adjudicate and punish the contempt during the trial rather than awaiting the end of the trial. The Court's answer to this obvious result of its holding is the adjuration that "[s]ummary convictions during trial that are unwarranted by the facts will not be invulnerable to appellate review." *Id.,* at 10. What this statement portends for the future of the Court's inveterate propensity to second-guess trial judges, is, as they say, "anybody's guess."

I dissent from the Court's reversal of the convictions in *Codispoti* v. *Pennsylvania.*